

“Political Shari’a”?

Human Rights and Islamic Law in Northern Nigeria

I. Summary	1
II. Recommendations	6
To Nigerian government and judicial authorities, at federal and state levels	6
To foreign governments and intergovernmental organizations.....	8
III. Background	9
Shari’a.....	10
IV. The extension of Shari’a to criminal law in Nigeria.....	13
Shari’a courts and appeal procedures.....	18
The role of the “ulama”	19
Choice of courts.....	19
V. Human rights violations under Shari’a in northern Nigeria.....	21
Use of the death penalty	21
Case study: Fatima Usman and Ahmadu Ibrahim (Niger State).....	25
Death sentences in Bauchi State	30
Yunusa Chiyawa	30
Jibrin Babaji.....	30
Umar Tori.....	32
The execution of Sani Yakubu Rodi (Katsina State).....	32
Attahiru Umaru (Kebbi State).....	33
Sarimu Mohammed Baranda (Jigawa State)	33
Safiya Hussein (Sokoto State).....	34
Amina Lawal (Katsina State)	35
Other adultery cases.....	36
Amputation sentences	36
Execution of amputation sentences in Zamfara State.....	37
Prolonged detention of defendants sentenced to amputation	39
Case example: Yahaya Kakale (Kebbi State).....	42
Other cases and patterns of abuse.....	45
Police torture and forced confessions.....	45
Absence of legal representation and abuse of power by police and prosecution officials.....	52
Children sentenced to amputation.....	56
Floggings	58
Discrimination against women.....	63

VI. Absence of legal representation	68
VII. Training of judges	71
VIII. The enforcement of Shari'a and the role of the hisbah.....	73
IX. Freedom of conscience and religion, and the impact of Shari'a on non-Muslims.....	82
X. The impact of Shari'a on freedom of expression.....	86
Self-censorship	88
XI. The politicization of religion: reactions to the implementation of Shari'a.....	90
XII. International reactions to Shari'a in Nigeria.....	94
XIII. Shari'a and the Nigerian constitution.....	96
XIV. The federal government's position on Shari'a	99
XV. Failure to conform to international human rights standards	103
The right to life.....	104
The right to a fair hearing	105
The right to be free from torture and cruel, inhuman or degrading treatment or punishment.....	106
The right to equality before the law	108
The right to privacy	109
XVI. Conclusion.....	109
XVII. Acknowledgements	111

I. Summary

Since 2000, twelve states in northern Nigeria have added criminal law to the jurisdiction of Shari'a (Islamic law) courts. Shari'a has been in force for many years in northern Nigeria, where the majority of the population is Muslim, but until 2000, its scope was limited to personal status and civil law. The manner in which Shari'a has been applied to criminal law in Nigeria so far has raised a number of serious human rights concerns. It has also created much controversy in a country where religious divisions run deep, and where the federal constitution specifies that there is no state religion.

Shari'a is seen by many Muslims as an entire system of guidelines and rules which encompass criminal law, personal status law, and many other aspects of religious, cultural, and social life. There are several different schools of thought and within each of these, different interpretations of the provisions of Shari'a. Human Rights Watch does not advocate for or against Shari'a per se, or any other system of religious belief or ideology; nor do we seek to judge or interpret the principles of any religion or faith. We are simply concerned about human rights violations resulting from the implementation of any legal system, in any country.

This report does not attempt to study the Shari'a system as a whole. It concentrates on Shari'a in the sphere of criminal law as applied in northern Nigeria and identifies specific aspects of the legislation and practices which have led or are likely to lead to violations of human rights.¹ Some of these practices violate what many Muslims consider to be Shari'a's own rules and principles, as well as provisions within the Nigerian constitution. The report makes recommendations to the Nigerian federal and state governments for reforming these aspects to ensure conformity with the international and regional human rights standards and conventions which Nigeria has ratified.

The provisions for and imposition of sentences amounting to cruel, inhuman and degrading treatment and punishment, in particular the death penalty, amputations and floggings, are among the main human rights concerns arising in the context of Shari'a in northern Nigeria. Since 2000, at least ten people have been sentenced to death by Shari'a courts; dozens have been sentenced to amputation; and floggings are a regular

¹ Human Rights Watch has not carried out research into the application of Shari'a to civil and personal status law. However, several Nigerian nongovernmental organizations have been working in this area, notably to improve the status of women and to educate women about their rights.

occurrence in many locations in the north.² Human Rights Watch is unconditionally opposed to the use of the death penalty, in any legal system and in any country, as it constitutes the ultimate violation of the right to life and an extreme form of cruel, inhuman and degrading punishment. Human Rights Watch is also unconditionally opposed to other cruel and degrading punishments, some of which, such as amputations, constitute torture.

Of equal concern is the lack of respect for due process which has characterized many trials in Shari'a courts. The main failings documented by Human Rights Watch include defendants' lack of access to legal representation; the failure of judges to inform defendants of their rights and grant them these rights; the courts' acceptance of statements extracted under torture; and the inadequate training of Shari'a court judges which has resulted in these and other abuses. The practice of convicting defendants on the basis of confessions alone is particularly worrying in the light of well-documented torture by the police, other forms of pressure exerted on defendants by police, prosecution officials and others, and widespread corruption in the judiciary. Almost all the victims of these abuses have been vulnerable men and women from poor backgrounds who have little or no knowledge of their rights or of legal procedures, or who lack the financial means to obtain legal assistance, even when they know they are entitled to it. In the cases studied by Human Rights Watch so far, trials in Nigerian Shari'a courts failed to conform to international standards of fairness and violated defendants' right to a fair hearing, breaching not only Nigeria's international human rights obligations, but also provisions within the Nigerian constitution and, according to many Nigerian Muslims, principles within Shari'a itself. Human Rights Watch believes that had Shari'a court judges followed due process and had defendants had full legal representation, many of these death sentences and amputation sentences would never have been passed—especially in view of the safeguards which exist within Shari'a against harsh and unfair sentencing.

Human Rights Watch is also concerned at provisions within Shari'a that discriminate against women, both in law and in practice, and other patterns of human rights violations against women in this context. Some of these violations do not stem directly from the legislation itself, but from the way it has been used and from a climate of intolerance which has accompanied the introduction of the new legislation.

² As explained in this report, accurate figures about trials and sentences by Shari'a courts are difficult to obtain from official sources in Nigeria. These figures are based on Human Rights Watch's own research and on information provided by Nigerian lawyers, nongovernmental organizations and other sources.

Human Rights Watch's research into the application of Shari'a in Nigeria has revealed patterns of fundamental human rights violations which are not peculiar to Shari'a but typify the human rights situation in Nigeria as a whole. For example, systematic torture by the police, prolonged detention without trial, corruption in the judiciary, political interference in the course of justice, and impunity for those responsible for abuses occur not only in the context of Shari'a cases, but are at least as widespread in cases handled by the parallel common law system.

Indeed, Human Rights Watch's concerns about the state of Nigeria's justice system are not limited to those areas where Shari'a is in force. In the south and other parts of the country where Shari'a is not in application, grave human rights problems persist. Human Rights Watch has reported extensively on those concerns in other reports, and is continuing to monitor and raise these issues with the Nigerian authorities.³

The information and views in this report are based on several months of research by Human Rights Watch in 2003, including in five northern states (Kaduna, Kano, Kebbi, Niger, Zamfara), and discussions in these and other parts of Nigeria with a wide range of people, including defendants tried by Shari'a courts, lawyers, court officials, federal and state government officials, members of the *hisbah* (Shari'a enforcement groups), human rights organizations, women's organizations, and other members of civil society, Muslim and Christian religious leaders, academics, and many other men and women directly or indirectly affected by the application of Shari'a. Most of those interviewed were northerners and Muslims, from different backgrounds and with a range of views on the question of Shari'a and the manner in which it is being applied. We also sought the views of a number of non-Muslims and people from other parts of Nigeria.

In view of the high level of international attention which has already surrounded the cases of Safiya Husseini and Amina Lawal, two women sentenced to death by stoning for adultery, Human Rights Watch has chosen to concentrate in this report on some of the lesser-known cases where the violations of the rights of defendants have been equally serious but have received less public attention.

Human rights in the framework of Shari'a cannot be separated from broader issues of contention in the Nigerian context; this report looks at some of these issues in as far as they relate to the human rights situation. In particular, it refers to debates on the constitutional validity of Shari'a and points to specific sections of the Nigerian

³ Human Rights Watch reports on other aspects of the human rights situation in Nigeria are available on our website www.hrw.org.

constitution which have been used by Shari'a advocates and opponents alike to support their respective positions. The report also describes the politicization of religion which has intensified since 2000.

With the exception of state government officials and some conservative Muslim leaders, the majority of people interviewed by Human Rights Watch expressed their dissatisfaction with the manner in which Shari'a was being applied in Nigeria. Many had initially supported its introduction and continued to profess their commitment to Shari'a, but explained that they were disillusioned with the way in which it had become politicized in the hands of state government officials. The result, in their words, was that the Shari'a in application was not "proper Shari'a," but "political Shari'a." They doubted the sincerity of state governors in introducing Shari'a and complained about politicians' failure to implement the economic and social aspects, pointing to the continuing poverty across northern Nigeria and the absence of visible improvements in their daily lives.

Human Rights Watch takes no position on what constitutes "proper Shari'a," but our own research confirmed the view that Shari'a has been manipulated for political purposes, and that this politicization of religion has led to further human rights violations—beyond those already contained in some of the legislation.⁴ As explained in this report, there is little doubt that most of the governors who introduced Shari'a into their states did so primarily for political reasons, in order to secure votes and increase their popularity. They have been prepared to overlook and even sanction human rights violations for the sake of their own political ambitions. They have disregarded the more compassionate and generous aspects of the philosophy which many Muslims believe underlie Shari'a, both in the criminal justice sphere and in the economic sphere.

Since around 2002, the application of Shari'a appears to have lost steam in northern Nigeria. Shari'a legislation is still in place in twelve states and Shari'a courts are continuing to function and hand down sentences; but the political will to be seen to be enforcing it in a strict manner has waned. State government officials—who, along with some religious leaders, have been the main champions of Shari'a in Nigeria—have staked their personal reputation on its successful implementation, and are therefore reluctant to admit that it has lost its impetus. However, a study of the outcome of a number of trials, combined with comments made by state government officials and others, shows a reluctance to carry out some of the harsher aspects of the system, such as death sentences and amputations, and a desire to avoid further controversy. For

⁴ Human rights concerns about the legislation relate in particular to women's rights and to the imposition of corporal punishments, as detailed in this report.

example, death sentences are still being imposed, but less frequently, and with one exception (which resulted in an execution by hanging), all the capital trials that have been concluded so far since 2000 have resulted in acquittals by the court of appeal. Likewise, dozens of people have been sentenced to amputation of the hand, but only three amputations have been carried out, and none since mid-2001. The Shari'a enforcement groups, known as the hisbah, appear to have lost some of their initial enthusiasm for the strict enforcement of Shari'a in public life, and cases of harassment by the hisbah have decreased. It would appear that the combination of external pressure and domestic disillusion with the manner in which Shari'a has been implemented has had the effect of dampening the politicians' zeal: they have realized that their strategy of using Shari'a as a quick way to boost their popularity is no longer politically viable, particularly because it has made them unpopular among constituencies upon whom they had relied for support.

Human Rights Watch believes that the time is right for the Nigerian federal and state governments to re-evaluate the application of Shari'a, now that it has been in operation for several years. Whatever the political considerations—some of which are described in this report—federal as well as state government officials have a responsibility to ensure that the application of Shari'a does not lead to human rights violations. In practice, this would mean amending aspects of the Shari'a legislation and removing those provisions which constitute inherent violations of fundamental rights, including discrimination against women. But it also means implementing less controversial measures, such as ensuring that all defendants are fully informed of their rights, particularly the right to legal counsel, and that judges are properly trained before taking on criminal cases, particularly those cases involving death sentences or corporal punishments. Such administrative and procedural measures would go a long way towards minimizing gross injustices of the type witnessed since 2000.⁵ However, attempts to improve the conduct of trials within the existing Shari'a legislation should not obscure the need to eliminate provisions for cruel punishments and discrimination enshrined in the law.

This report also contains recommendations to the international community. The volatile politics surrounding Shari'a have attracted significant attention both inside and outside Nigeria. In particular, the cases of Safiya Husseini and Amina Lawal, two women sentenced to death by stoning for adultery, captured the public imagination at the international level and were the subject of massive publicity. Some of this media coverage has been ill-informed, selective, and sensationalist. Human Rights Watch

⁵ These improvements are needed not only in Shari'a, but also in the rest of the justice system in operation in Nigeria.

believes that action on the part of foreign governments, international organizations, foreign media and others can be instrumental in leading to human rights reforms in Nigeria, if it is based on an accurate assessment of the situation. The disproportionate amount of international attention on Shari'a has led to the erroneous perception that this is the only, and the worst, human rights problem in Nigeria. Yet there are numerous other human rights violations in Nigeria which are at least as serious and deserve urgent attention on the part of the international community. Thousands of people have been killed in inter-communal conflicts or in massacres by the Nigerian army; extrajudicial killings and torture by the police are routine across Nigeria; and more than two thirds of the prison population have not even been tried. Human Rights Watch urges readers of this report to extend their concern about Shari'a to some of these other problems, which have been documented in detail by Nigerian and international human rights organizations, including Human Rights Watch.⁶

II. Recommendations

To Nigerian government and judicial authorities, at federal and state levels

- The Nigerian federal and state governments should carry out a review of Shari'a state legislation introduced since 2000 and remove those sections of the laws which violate fundamental human rights and breach Nigeria's obligations under the Nigerian constitution and international human rights conventions. In particular, they should eliminate provisions for cruel, inhuman and degrading punishments including death sentences, amputations, and floggings, and provisions which discriminate against women. They should also decriminalize consensual sexual relations between adults.
- The federal government should take steps towards the abolition of the death penalty in all legal systems operating in Nigeria. Pending abolition, judges should refrain from handing down death sentences, amputations and floggings, and government authorities should not authorize the execution of these punishments. State governors should commute all outstanding death and amputation sentences.

⁶ All Human Rights Watch's reports on Nigeria are accessible on the Human Rights Watch website www.hrw.org.

- Prisoners who have been sentenced to amputation should be released if they have already served a prison term commensurate with their offense. An independent judicial panel should review their cases promptly and recommend their release as appropriate.
- Authorities should make it mandatory that at least three judges sit in lower or upper Shari'a courts dealing with criminal cases, particularly for offenses punishable by death or amputation.
- Shari'a court judges should always inform defendants of their rights, ensure that they have understood these, and confirm that they are fully aware of the sentence they may face if they plead guilty. Judges should systematically inform defendants of their right to legal representation and offer them the opportunity to adjourn the trial to give them time to find a lawyer. Legal representation should be made mandatory in all trials where the offense is punishable by death or amputation and the federal and state governments should enable defendants who are indigent to receive free legal representation.
- Judges should not convict defendants solely on the basis of a confession. In cases where a confession is considered alongside other evidence, judges should always verify that the confession has been made willingly. Judges should never accept statements alleged to have been extracted under torture. They should order immediate independent investigations into any claims by defendants that the police tortured them in order to extract a confession. Prisoners convicted on the basis of confessions allegedly extracted under torture should be released immediately.
- Government and judicial authorities should continue to develop training programs for Shari'a court judges, as well as judges working under parallel legal systems. The training should emphasize the importance of respecting due process and should include detailed training in human rights law and its application. Judges should be made aware of Nigeria's obligations under the international and regional conventions it has ratified. Judges' application of this training should be regularly monitored and measures taken against judges who fail to respect due process.
- More generally, state governments should encourage public reflection and debate on the compatibility of human rights and Islamic law, as well as other

systems of law, and highlight the notions of justice, compassion and fundamental rights which are integral to Shari'a.

- State governments should instruct the hisbah not to harass or abuse members of the general public and should set up mechanisms to monitor their adherence to these instructions. If hisbah members apprehend someone suspected of committing a criminal offense, they should immediately hand them over to the police. Under no circumstances should they dispense punishment themselves. Any member of the hisbah responsible for ill-treating a suspected criminal should be suspended from his duties and brought to justice.

To foreign governments and intergovernmental organizations

- Continue to encourage the Nigerian federal and state governments to amend legislation so that it excludes cruel, inhuman, and degrading punishments, provisions which discriminate against women, and the criminalization of consensual sexual relations between adults.
- Urge government and judicial authorities to ensure respect for due process in Shari'a court trials.
- Support initiatives by Nigerian human rights organizations and women's organizations— financially or otherwise— to provide legal representation, advice, and other forms of assistance to defendants, and to raise awareness of people's rights under Shari'a, especially among the rural and the poor.
- Extend concern about human rights in Nigeria to other areas where violations have been at least as grave as under Shari'a. These concerns should be voiced alongside concern about human rights under Shari'a, and with equal force. In particular, urge the Nigerian government to take effective action to prevent further extrajudicial killings by the security forces and intercommunal violence and to put an end to the impunity protecting those responsible for these crimes. Also urge the government to address ongoing problems within the common law system in Nigeria, including arbitrary arrests, prolonged pre-trial detention, and torture by the police.

III. Background⁷

Nigeria has an estimated population of more than 130 million and more than 250 ethnic groups. Up to date statistics are not available, but it is estimated that around half the population are Muslims, while just under half are Christians. A smaller minority observe traditional religions. The northern part of the country is predominantly Muslim, with the Hausa and Fulani the majority ethnic groups; the south is predominantly Christian. However, the constant movement of populations, particularly in the context of trade, has meant that both Muslim and Christian communities are found in most parts of the country, with sizeable Christian minorities in some northern states and sizeable Muslim minorities in the south. Muslims and Christians are distributed more evenly in the central parts of Nigeria known as the Middle Belt, as well as in parts of the southwest, where the dominant ethnic group, the Yoruba, is made up of both Muslims and Christians.

Nigeria is a federation of thirty-six states. Each state has its own government and its own state house of assembly. State governors are granted considerable autonomy in many respects and, in practice, the federal government rarely intervenes to challenge their decisions or policies. About half of Nigeria's states are considered to be part of what is commonly referred to as the north, although there is no recognized boundary between north and south, and the regional and cultural identity of some states is the subject of much dispute.

Partly as a result of its greater ethnic and religious homogeneity, the northern part of Nigeria has been treated as a distinct entity since the early part of the twentieth century, including during the British colonial era when it was known as the Northern Region. From 1914, when the state of Nigeria was first created until the 1950s, Nigeria was administered as two separate halves. Even the legislation applied in the north was different; up until today, a separate Penal Code of Northern Nigeria⁸ remains in force, while the rest of the country has its own Criminal Code.⁹ Politics became regionalized early on in Nigeria's history, with the emergence of three main blocs: the north, the

⁷ This section provides just a brief summary of the background issues relevant to the application of Shari'a in Nigeria today. Human Rights Watch does not seek to duplicate the work of numerous Nigerian academics, lawyers, activists and others who have written extensively and knowledgeably about the history of Islam and Shari'a in Nigeria and the debates surrounding the place of Shari'a in Nigeria. Some of these works are referred to in footnotes in this report.

⁸ The Penal Code (Northern States) Federal Provisions Act of 1959 is commonly referred to as the Penal Code or Penal Code of Northern Nigeria.

⁹ Criminal Code Act, 1961.

south-west, and the south-east.¹⁰ There have been longstanding political tensions and rivalries between the predominantly Hausa population of the north, and a multitude of other ethnic groups in the south and other parts of the country, partly as a result of the domination of northerners in military and political positions during the long periods of military rule. Most of the constitutional changes which led to the full federalization of the country were brought in during the 1950s, leading up to the country's independence in 1960. However, even since the end of military rule in 1999, many southerners still resent what they perceive as the continued domination of northerners in the political and military elite. This historical competition between north and south, aggravated by the religious dimension which has been brought to the fore in more recent years, is central to many of the tensions still prevailing in Nigeria. In this context, Shari'a has increasingly assumed a symbolic importance in terms of regional as well as religious interests.

Shari'a

Shari'a is a system of Islamic law based on four main sources: the *Qur'an* (God's revelation to the Prophet Muhammed); the *Sunna*, or actions of the Prophet, described in the *Hadith*; the *Qiyas* or process of analogical reasoning based on understanding of the principles of the Qur'an or the Hadith; and the *Ijma*, or consensus of opinion among Islamic scholars.

Shari'a has been applied in many different countries with large Muslim populations to both criminal and civil law. For many Muslims, it is also a philosophy and entire set of rules and guidelines which extends well beyond the Western concept of law and governs day to day conduct in terms of social relations, private life, and ethical codes. There are certain guiding principles within Shari'a upon which most Muslims agree, but, as with all religions, there are differences in interpretation. In particular, there have been significant differences in interpretation of the Qur'an and the Hadith, and therefore different understandings of aspects of Shari'a among religious leaders, scholars, and others. The majority of Muslims in Nigeria are Sunni. Within Sunni Islam, the four main schools of thought—Maliki, Hanafi, Hanbali and Shafi—have each developed slightly different beliefs and observe different traditions; they have also formulated different

¹⁰ These regions are home to the three largest ethnic groups: the Hausa in the north, the Yoruba in the southwest, and the Igbo - and a number of other ethnic groups - in the southeast. Many Nigerian academics and writers have highlighted the role of colonial regional policy in the emergency of ethnic and regional politics in Nigeria.

prescriptions. The form of Shari'a applied in Nigeria is based in most part on the Maliki school of thought, which is dominant among Muslims in west and north Africa.¹¹

In terms of criminal law, there are three main categories of offenses and punishments under Shari'a. The first are the *hudud* (or *hadd*, in the singular) punishments laid out in the Qur'an and the Hadith; because they are specified by God, they are regarded as fixed and cannot be changed. They include theft (punishable by amputation), armed robbery (punishable by death or amputation), extra-marital sex (punishable by death or flogging), false accusation of extra-marital sex (punishable by flogging), consumption of alcohol (punishable by flogging), and apostasy or renunciation of Islam (punishable by death). However, even these offenses, despite their fixed nature, have been interpreted differently by different schools of thought, and in different countries. For example in Nigeria, apostasy is not included as an offense in the Shari'a penal codes, presumably in recognition of the diversity of faiths in the country, even in the north, and the right to freedom of religion.

The second category are *qisas* and *diya* punishments. *Qisas*, applicable for murder or injury, is based on the notion of retaliation: it involves inflicting the same punishment on the defendant as she or he inflicted on the victim, in some cases using the same methods (for example, a murderer should be killed with the same type of weapon as she or he used to commit the murder). *Diya*, or the payment of blood money, requires financial or material compensation for the crime in cases where the family of the victim does not demand *qisas*. The third category are *ta'zir* punishments, where judges can exercise discretion and choose from a range of punishments, as the state is not bound by the wishes of the victim's relatives.

In terms of criminal law, according to Shari'a, the accused should always be given the benefit of the doubt. Considerable latitude is provided to Shari'a court judges who are expected to exercise great caution before sentencing, even in the case of *hudud*, where fixed punishments are specified. For certain crimes, the standard of evidence required for conviction is deliberately set so high as to be almost unattainable, meaning that the law is intended more as a deterrent than a real prospect of punishment.

¹¹ The Maliki and Hanafi schools are generally more flexible than the Hanbali and Shafi schools of thought in that they allow for a wider range of sources of legislation, including *istihsan* (preference), *istishab* (acquaintance), *urf* (useful public practice) and *maslaha* (public good). This range of sources has allowed laws to evolve and has been used by those campaigning for legal reform. See Albaqir Al-Afif Mukhtar, *Human Rights and Islamic Law: the development of the rights of slaves, women and aliens in two cultures*, unpublished PhD thesis, 1996, University of Manchester.

Even if the accused confesses to the crime, Shari'a allows them several opportunities to withdraw the confession. The confession should be made willingly and the accused should fully understand the implications of confessing. Judges should always look for mitigating circumstances—for example the poverty of the accused, in cases of theft—and the mental sanity of the defendant should always be taken into account when determining the sentence. The Zamfara State governor (one of the keenest advocates of Shari'a in Nigeria) told Human Rights Watch: "If someone's basic needs are met but he still goes to steal, the requirement for amputation has been met. But if the person is needy, they can't even be punished under Shari'a. Or they will be given a light sentence, for example one or two months."¹² The Kebbi State Attorney General also claimed that Shari'a court judges were taught to ask the defendants, first, whether they committed the offense, and secondly, why, and that if they said they had stolen because they were hungry, they should not be convicted.¹³ In addition, to be convicted of theft, a person must have removed an object which is not his/her own from its usual place of custody; if the object is in a different place or has been left out negligently, the person should not be convicted.

The accused should also be given several chances, including the chance to escape punishment completely. A Muslim human rights activist explained to Human Rights Watch: "Under Shari'a, if a convicted person runs away from the authorities, the case is over. They can't pursue him. The emphasis is on repentance."¹⁴ Judges should also satisfy themselves that the accused fully understand and appreciate their offense and the consequences in terms of sentences they may occur. However, in practice, Shari'a courts have failed to observe all these requirements.¹⁵

Islam has been practiced in Nigeria since around the eleventh century, and Shari'a has been applied in the northern part of the country before, during and since the colonial period.¹⁶ It has been in force at least since the Islamic jihad led by Shehu Uthman Dan

¹² Human Rights Watch interview with Zamfara State Governor Ahmed Sani, Gusau, August 4, 2003.

¹³ Human Rights Watch interview with Ibrahim Maiafu, Kebbi State Attorney General, Birnin Kebbi, December 18, 2003.

¹⁴ Human Rights Watch interview, Abuja, July 21, 2003. This is a reference to an incident which occurred during the Prophet's time, when a man sentenced to death by stoning escaped after he had received the first stones. When people ran after him to try to catch him, the Prophet said they should not do so (see Ibn Abi Hadid, *Sharh al-Balagha*, p.1311). However, the principle underlying this incident – that a convicted person can be allowed to escape – has not been institutionalized in law.

¹⁵ Many Muslims in Nigeria and other countries have written about the principles of compassion, fairness, and justice inherent in Shari'a. For a succinct explanation of these principles and the failure of Nigerian state governments to live up to them, see "Punishments under Shari'a and their significance," by Maryam Iman, published in *Newswatch* (Lagos), November 3, 2002.

¹⁶ Many Nigerian and non-Nigerian writers have published accounts of the historical evolution of Shari'a in northern Nigeria. See for example "An opportunity missed by Nigeria's Christians," by Philip Ostien, Faculty of

Fodio and the establishment of the Sokoto Caliphate in 1804. However, some scholars have argued that it was established even earlier in Kanem Borno (in present day northeastern Nigeria and southern Chad).¹⁷

When northern Nigeria was colonized by the British in the late nineteenth century, colonial laws continued to recognize Shari'a, but certain aspects of it were modified or restricted. Shari'a courts—then known as area courts—had jurisdiction only over matters of personal status law, such as divorce, inheritance, and domestic disputes. Criminal matters were dealt with under the Penal Code for Northern Nigeria; although strongly influenced by the British legal system, the Penal Code included many components of Shari'a. However, the British colonial administration excluded the harsher penalties such as death by stoning and amputations on the basis that they were “repugnant to natural justice, equity and good conscience;” floggings continued to be carried out.

Many northerners interviewed by Human Rights Watch in the course of our research stressed that Shari'a was not new in Nigeria. They explained that what was new, or what was being revived, was its extension to criminal law, and downplayed the overall significance of the new legislation brought in since 2000. However, the extension to criminal law has had wide-ranging consequences and has opened up complex political and religious debates. It has also raised fundamental human rights issues, particularly with regard to the introduction of *hudud* punishments, which include death by stoning for adultery, amputation for theft, and flogging for consumption of alcohol.

IV. The extension of Shari'a to criminal law in Nigeria

The governor of the northern state of Zamfara, Ahmed Sani, was the first to introduce Shari'a for criminal law, within a year of the 1999 elections which brought President Olusegun Obasanjo and new state governors to power. The Shari'a Establishment Law was introduced in Zamfara State on October 27, 1999, and came into force on January 27, 2000. The introduction of Shari'a in Zamfara State attracted a huge amount of attention, and Ahmed Sani became the self-appointed champion of Shari'a in Nigeria.

The Zamfara state governor had accurately judged the mood of population. The introduction of Shari'a was initially very popular, for several reasons. Foremost among

Law, University of Jos, presented at a conference on “The Shari'a debate and the shaping of Muslim and Christian identities in Northern Nigeria,” University of Bayreuth, July 11-12, 2003.

¹⁷ See A.A Gwandu, “Shari'a in Northern Nigeria: the Experiences of Borno and Sokoto Caliphates,” in A.M.Yakubu, A.M.Kani and I.Junaid (eds.) “*Understanding Shari'a in Nigeria*” (Spectrum Books, Ibadan.)

these was public disenchantment with a government and a legal system which were failing people in many respects. There is widespread poverty across Nigeria, and the north is especially underdeveloped. There was the expectation among the general public that Shari'a, with its emphasis on welfare and the state's responsibility to provide for the basic needs of the population, would go some way towards alleviating their plight. People also felt frustrated with the law enforcement agencies and the judiciary: crime was increasing, yet the police and the courts were paralyzed by inefficiency and corruption. Shari'a was seen as an alternative to these problems, offering a system which promised to be faster, less cumbersome, and less corrupt. Finally, the introduction of Shari'a was no doubt attractive to many as a re-affirmation of their religious identity, especially in the context of recurring tensions between Muslims and Christians.¹⁸

Capitalizing on the mood in Zamfara State, other state governors soon introduced their own Shari'a legislation. By 2002, twelve states had adopted some form of Shari'a into their criminal legislation: Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe, and Zamfara. These twelve states are so far the only states in Nigeria where Shari'a courts have the jurisdiction to try criminal cases. However, some Muslims in other parts of the country, particularly in central and western states, such as Nasarawa and Kwara, where there are large Muslim populations, have been agitating for Shari'a to be introduced there; to date, these state governors have resisted the pressure. However, in the southwestern state of Oyo, it was reported that on October 31, 2002, a man was sentenced to flogging for extra-marital sex and the punishment carried out, even though Shari'a is not in force in the state. He was sentenced not by a Shari'a court, but by an Independent Shari'a Panel.¹⁹

In all these twelve states, Shari'a applies only to Muslims. State governments have not attempted to coerce non-Muslims into being tried by Shari'a courts. However, non-Muslims are not prevented from accessing the Shari'a jurisdictions and may choose to take cases through the Shari'a courts if they wish. Some have done so in the belief that their cases would be treated faster, but overall, such cases are rare. Normally, non-Muslims accused of criminal offenses continue to be tried under the common law system by magistrates' or High Courts, which operate in parallel with the Shari'a courts.

¹⁸ Some of the other political and economic factors which increased popular support for Shari'a are described in Hussaini Abdu, "Power in the Name of Allah? Muslim Women in Contemporary Nigerian Politics," presented at a national workshop on Gender, Politics and Power, organized by the Centre for Social Science Research and Development, July 29-30, 2003, Lagos.

¹⁹ See "First flogging for adultery in southwest Nigeria," Agence France-Presse, October 31, 2002, and "Man receives 100 strokes today under Shari'a in Oyo State," *The Vanguard* (Lagos), October 31, 2002. The Independent Shari'a Panel was established by Muslim groups, not by the state government, and does not enjoy state recognition. It sits in court premises and attends to civil and personal cases voluntarily reported by offenders, parties in conflict, and families.

A third type of court, customary courts, also deal with cases of non-Muslims in the south, as well as in Kaduna State. At the level of state governments, the state attorney general is responsible for the operation of both the common law and Shari'a systems in the state; there is also a Shari'a section in each state ministry of justice.

Most of the twelve northern states have adopted a Shari'a penal code and a Shari'a code of criminal procedure, based, in most cases, on that of Zamfara State. Some, such as Niger State, have opted to amend existing legislation to make it comply with Shari'a and have not introduced a separate Shari'a penal code or code of criminal procedure.²⁰ There is still considerable confusion about which legislation is in force in the northern states, even among judges, academics, and other people described as Shari'a "experts." In any event, there is an overlap between the Penal Code for Northern Nigeria and the Shari'a laws, as the Penal Code includes elements of Islamic law and provided the basis for whole sections of the Shari'a penal codes. However, there are some critical differences. In particular, the Shari'a codes contain provisions for death by stoning and amputations which were not included in the Penal Code.

In most cases, the Shari'a legislation was rushed through in a hurried and incomplete way. A human rights activist and lawyer told Human Rights Watch: "Advocates of Shari'a wrote the laws in a few weeks. The authors knew they were imperfect but rushed them through for political reasons. Now they are gradually reviewing them [...] They wanted to precipitate a *fait accompli*."²¹ The former area courts were renamed Shari'a courts and judges who only had experience in personal status law matters were suddenly expected to hear criminal cases and, in the most serious instances, to try offenses punishable with death. They were thrown into this role with very little training or background, with the result that many judgments handed down contained serious errors of procedure. Judgments were inconsistent and based on vastly different interpretations of the law. Even lawyers and academic scholars who had specialized in studying Shari'a offered significantly different interpretations of the new legislation. Not only were the new Shari'a penal codes imperfect and inconsistent, but some of them referred to

²⁰ Some of the differences between the Shari'a legislation adopted in different states are outlined in "Legal pluralism and the development of the rule of law in Nigeria: Issues and challenges in the development and application of Shari'a," by Dr Muhammed Tawfiq Ladan of Ahmadu Bello University, Zaria. The paper, which also lists the different states' legislation relating to Shari'a, was one of several presented at a conference on "Shari'a penal and family laws in Nigeria and in the Muslim world: a rights based approach," organized by the International Human Rights Law Group in Abuja on August 5-7, 2003.

²¹ Human Rights Watch interview, Abuja, July 21, 2003. State governors subsequently recognized that the Shari'a codes which had been adopted contained numerous inconsistencies and errors. As a result, in 2002, efforts began to harmonize them and ensure consistency. Shari'a experts at the Centre for Islamic Studies and the Faculty of Law at Ahmadu Bello University, Zaria (Kaduna State), were among those tasked with this exercise. Some state governments, such as Kano, also set up committees of Islamic scholars to review and perfect the state legislation. By mid-2004, the formal harmonization of codes had not yet been completed.

prescriptions within Islam which were not codified in the new laws but were nevertheless expected to be enforced. For example, several states' Shari'a penal codes refer to offenses which are not specified in the Shari'a penal codes themselves but are punishable by imprisonment, flogging or fines.²²

The general population was even less well-prepared for the introduction of an entirely new legal system, and ill-informed about the procedures and about their rights. Ordinary people have found it very difficult to challenge decisions of the Shari'a courts, especially as judicial officials, religious officials and others have often portrayed these as the decisions of God rather than the decisions of judges—a view which has discouraged many from openly questioning the outcome of trials. Many Muslims who are in favor of Shari'a but critical of the manner in which it was introduced highlighted the failure of state government authorities to raise awareness and educate the population before introducing the system.²³

Following the introduction of the new Shari'a legislation, most state governments set up structures and groups to ensure the implementation of Shari'a. These structures included Shari'a implementation committees and groups known as *hisbah*, whose main role was to ensure observance of Shari'a among the population and to report any breaches. The creation of the hisbah was popular in some quarters because of a deep distrust in the Nigerian federal police force, both among the general public and among state politicians.²⁴ In several states, the hisbah have been used to carry out arrests, for example in cases of suspected adultery or fornication, consumption of alcohol and other offenses. As described in this report, members of the hisbah have been responsible for a range of human rights abuses in the course of enforcing Shari'a, especially in the one to two years after they were set up.

Shari'a has been applied inconsistently across the twelve states. The enthusiasm with which it has been enforced, both by the courts and by the hisbah and other implementation groups, has also varied greatly, depending on the religious make-up of

²² For example Section 92 of the Zamfara State Shari'ah Penal Code Law 2000 states: "Any act or omission which is not specifically mentioned in this Shari'a Penal Code but is otherwise declared to be an offence under the Qur'an, Sunnah and *Ijtihad* of the Maliki school of Islamic thought shall be an offence under this code and such act or omission shall be punishable: a) With imprisonment for a term which may extend to 5 years, or b) With caning which may extend to 50 lashes, or c) With fine which may extend to N5,000.00 or with any two of the above punishments."

²³ Human Rights Watch interviews, Abuja and various locations in northern Nigeria, July and August 2003.

²⁴ State governments across Nigeria have been agitating for greater political and legal autonomy for many years. Some of them have been calling for state governments to be able to create their own state police – a demand which the federal government has resisted to date.

the state and, to some extent, on the political whims of state governors. At the one end of the spectrum, Zamfara State has applied it the most strictly, although even there, the fervor has eased off since it was first introduced. At the other end of the spectrum, Kaduna State, where about half the population of the state are Christians and where the prospect of the introduction of Shari'a led to massive riots and killings in 2000,²⁵ few criminal cases have been brought before the Shari'a courts, and with one or two exceptions, harsh corporal sentences have not been passed. A human rights activist and academic in Kaduna told Human Rights Watch in mid-2003: "In Kaduna, the Shari'a courts are there but they are as good as not there. There has been no serious case since the [2000 and 2002] riots. They deal more with domestic cases."²⁶ A lawyer in Kaduna also said: "Generally, it is as if there is no Shari'a in Kaduna."²⁷ Kaduna is divided into "Shari'a-compliant" and "non Shari'a-compliant" areas; residents of the former, predominantly Muslim areas, are expected to comply with the requirements of Shari'a, whereas those of the predominantly non-Muslim or mixed areas are not. However, residents of Shari'a-compliant areas can simply cross over into a non-Shari'a compliant area, where they can buy and consume alcohol and where prostitution is common, then return to the Shari'a areas without any consequences. In the words of a human rights activist in Kaduna: "Shari'a in Kaduna exists in one street but not in another."²⁸

To a lesser extent, a similar situation has prevailed in Kano, at least in the state capital. While predominantly Muslim, Kano State has a significant minority of other groups. Alcohol has been sold openly in some areas, for example in the area known as Sabon Gari which is populated mostly by people who are neither Muslims nor northerners. However, in May 2004, it was reported that a new law outlawing the consumption of alcohol throughout Kano State, even for Christians, had been passed by the Kano State house of assembly. Even in states such as Zamfara, certain areas are designated as exempt from Shari'a. These are mainly areas or institutions under the control of federal authorities, such as military compounds. In these areas, alcohol is consumed liberally and openly, including by Muslims. They are only liable to be arrested if caught drinking alcohol outside these specific areas.

²⁵ For details of the 2000 and 2002 riots in Kaduna, see Human Rights Watch report "The 'Miss World riots:' continued impunity for killings in Kaduna," July 2003.

²⁶ Human Rights Watch interview, Kaduna, July 23, 2003.

²⁷ Human Rights Watch interview, Kaduna, July 24, 2003.

²⁸ Human Rights Watch interview, Abuja, July 23, 2003.

Shari'a courts and appeal procedures

There are three types of Shari'a courts dealing with criminal cases at state level. The lower and upper Shari'a courts (of which there are several in each state) hear cases in the first instance. Upper Shari'a courts also have appellate jurisdiction and are able to hear appeals from cases tried in the lower Shari'a courts. Each state then has its own Shari'a court of appeal, which hears appeals on cases tried by the upper Shari'a courts. Only one judge sits in the lower and upper Shari'a courts—a cause for concern in the case of crimes which carry sentences such as the death penalty or amputations. Between three and five senior judges sit at the Shari'a state court of appeal; these judges are generally more experienced than those sitting in the upper and lower courts.

After being sentenced by the upper or lower Shari'a court, the defendant is given a thirty day period in which to appeal. In practice, a number of appeals which were filed after the thirty day period had elapsed have been accepted.

Once defendants have exhausted their avenues for appeal within the state, and if the Shari'a court of appeal has confirmed the sentence, they can then appeal to the Federal Court of Appeal, and ultimately to the Supreme Court. These are both federal institutions and are not Shari'a courts, although they have jurisdiction to hear appeals from Shari'a courts and their appeal panels are supposed to include judges with expertise and knowledge of Shari'a. Some advocates of Shari'a have complained about the absence of a specialized Shari'a court of appeal at the federal level, arguing that the judges of the Federal Court of Appeal and Supreme Court are not well-versed in Shari'a; some also fear, perhaps, that these institutions are too close to the federal government, and therefore likely to be opposed to Shari'a.

If a death sentence or amputation is confirmed by a state's Shari'a court of appeal and the defendant chooses not to appeal to the Federal Court of Appeal, the state governor must personally authorize the execution of the punishment before it can take place, or can choose to pardon the convicted person.

At the time of writing, no death penalty cases tried under Shari'a have yet reached the Federal Court of Appeal or the Supreme Court. Only one amputation sentence is known to have reached the level of the Federal Court of Appeal: that of Yahaya Kakale, from Kebbi State, described in this report. This will be a test case and, depending on the outcome of the appeal, could set an important precedent for other cases. Lawyers are hoping that this case, and any other Shari'a case which reaches the federal level, will force consideration of the broader question of the constitutionality of Shari'a (see below). Should the Federal Court of Appeal or the Supreme Court rule that the Shari'a

court did not have the jurisdiction to hear criminal cases under the constitution, this and potentially all other cases could be thrown out, leading to the collapse of the whole basis of the Shari'a criminal system in its current form.

To date, lawyers preparing the grounds for appeals in Shari'a cases have concentrated on technical and procedural matters. Some of these grounds have been accepted by the Shari'a state courts of appeal who have ruled in favor of the defendants on the basis of these procedural points. Most lawyers have so far shied away from challenging the jurisdiction of the Shari'a courts and their constitutional right to try criminal cases, so no court of appeal has yet had to rule on these issues.

The role of the “ulama”

In parallel with the formal Shari'a court system, the *ulama*, or Islamic scholars, play a key role in some of the critical decisions in Shari'a criminal cases. In some cases, they may have the power of life and death over the defendant. The *ulama*, who play an influential role in social and political life in northern Nigeria, are consulted for advice and guidance by a number of actors, including Shari'a court judges and state governors. In the absence of any thorough training (see Section VII of this report), Shari'a court judges often refer to the *ulama* for advice if they are uncertain about the appropriate course of action. State governors also seek their advice on specific cases and expect to be guided by this advice, particularly on cases of amputation and death sentences where the *ulama* advise the governors on whether to confirm or commute the sentences. The advice provided by the *ulama* is not based on clearly formulated criteria, nor is it governed by any legislation or recognized regulatory framework. The lack of definition of the *ulama's* role and the lack of transparency about their decisions also favor corruption. A human rights activist told Human Rights Watch: “The role of the *ulama* varies. It depends on who pays them the best.”²⁹

Choice of courts

As indicated above, three different legal systems operate in parallel in Nigeria: the common law system (magistrates' and High Courts), Shari'a, and customary law. In principle, cases against Muslims are normally brought before Shari'a courts, but in practice, there is some discretion, and apparently arbitrary decisions have been made as to which courts should handle which cases. Corruption is widespread within the judicial system, and there are often no objective or consistent reasons why certain cases are brought before a Shari'a court or a magistrates' court. Defendants are rarely able to

²⁹ Human Rights Watch interview, Abuja, July 18, 2003.

challenge the choice of system, yet the consequences in terms of sentencing could be severe. For example, Mohammed Bala, in Kano State, was accused of theft on two separate occasions, in 2002 and 2003. He was tried on the first occasion by a Shari'a court and on the second occasion by a magistrates' court. The Shari'a court sentenced him to amputation, while the magistrates' court sentenced him to eighteen months' imprisonment, or a 5,000 naira fine. The reason for the different choice of courts was not known to the defendant.³⁰ In Birnin Kudu, Jigawa State, in around early 2002, several men accused of gang-raping a young girl were tried under the common law system. It was reported that the defendants' relatives, who were influential in the society, had persuaded the judicial authorities not to try them in a Shari'a court, even though all the defendants were Muslims.³¹

A number of defendants who were sentenced to amputation have alleged that police and judicial officials were bribed or otherwise pressured to take their cases before Shari'a courts. For example, Altine Mohammed, accused of theft in 2001 in Birnin Kebbi, Kebbi State, was initially taken to a magistrates' court; he pleaded not guilty and was sent on remand for two weeks. However, the grand kadi (judge), who owned the items he was accused of stealing, reportedly requested that the case be transferred to the Shari'a court. Altine Mohammed witnessed the grand kadi's messenger talking to a policeman from the Criminal Investigation Department at the magistrates' court. When he asked the policeman why his case was being transferred to a Shari'a court, the policeman said he would not tell him anything more unless he gave him 3,000 naira. The case was transferred to the Shari'a court. During the trial there, the grand kadi's messenger was one of the witnesses, even though he had not seen Altine Mohammed stealing the items and told the court that he did not know him.³² Altine Mohammed was sentenced to amputation by the Upper Shari'a Court 1, Birnin Kebbi, on July 25, 2001.

According to a lawyer in Kaduna State, the state attorney general decides which type of court should hear a case if the case is especially serious or controversial, or if it is a "capital offense."³³ He explained that the state attorney general's decision as to which type of court should hear a case is entirely at his own discretion.³⁴ In other cases, the decision is taken by the state commissioner of police. While Christians can refuse to be tried by a Shari'a court, Muslims cannot. The reasons for the decisions are not always

³⁰ Human Rights Watch interview, Goron Dutse Prison, Kano State, December 14, 2003.

³¹ Human Rights Watch interview, Kano, July 30, 2003.

³² Human Rights Watch interview, Kebbi Prison, Birnin Kebbi, December 17, 2003.

³³ The term "capital offense" is sometimes used in Nigeria to refer not only to offenses which are punishable by death, but also to those punishable by other harsh punishments, such as amputation.

³⁴ Human Rights Watch interview, Kaduna, July 24, 2003.

clearly articulated. For example, while a number of murder cases involving Muslim defendants have been brought before Shari'a courts, others have been brought before magistrates' courts. Furthermore, as indicated in this report, the police are often susceptible to pressure and corruption, and in practice, the decision to take a case to a particular type of court is often made at the lower levels of the judiciary.

In Zamfara State, however, in October 2002, a separate law was passed removing the criminal jurisdiction of magistrates' courts to try offenses committed by Muslims, thus confirming the absence of choice for all Muslim defendants: "[...] magistrates courts of whatever grade shall cease to have jurisdiction to try any criminal offence where the accused or all the accused persons profess the Islamic faith."³⁵ The law, initiated by the governor, was passed by the state house of assembly without much debate or controversy. As a result of this law, all cases involving Muslims were transferred from the magistrates' courts to the Shari'a courts in Zamfara State.

V. Human rights violations under Shari'a in northern Nigeria

Use of the death penalty

The death penalty is provided for in Nigeria not only in the Penal Code and Shari'a legislation in force in northern Nigeria, but also in the Criminal Code, which is in force in the rest of the country. Since 1999, the federal government has shown little enthusiasm for carrying out executions, but it has not taken steps to remove the death penalty from existing legislation. Under the common law system, courts have continued to hand down death sentences for offenses such as murder and armed robbery;³⁶ however, none of these have been executed since President Obasanjo came to power in 1999.³⁷

When northern state governors began introducing their own Shari'a penal codes in 2000, the scope of the death penalty was expanded to cover offenses such as *zina* (extra-marital

³⁵ Section 3 of Magistrates Courts (Restriction of Powers) Law 2002.

³⁶ Amnesty International recorded at least thirty-three death sentences passed since 1999, of which at least twenty-two were handed down under the Penal Code of Northern Nigeria. See Amnesty International report "Nigeria: the death penalty and women under the Nigerian penal systems," February 2004. The Nigerian human rights organization Legal Defence and Assistance Project (LEDAP) reported that according to law reports and court judgments, 47 death sentences had been confirmed by the Supreme Court between 2001 and 2003. See "Who has the right to kill – a report on death penalty in Nigeria, 2001-2003," LEDAP (Lagos).

³⁷ The last execution under the Criminal Code recorded by Amnesty International was in March 1999.

sex).³⁸ In human rights terms, this was one of the most significant changes introduced by the Shari'a legislation. Previously, *zina* was an offense under the Penal Code of Northern Nigeria, but was punishable by a prison term or a fine, not by death. The new Shari'a legislation not only continues to criminalize consensual sexual relations between adults, but imposes the harshest punishment for them. It makes a distinction between the penalties for married and unmarried defendants facing charges of *zina*. The charge of *zina* carries a sentence of death by stoning if the defendant is married, or has ever been married, even if they have subsequently divorced; in this context, the offense is referred to as adultery. In the case of unmarried defendants, the offense is referred to as fornication, and the sentence is one hundred lashes.

Since Shari'a courts started hearing criminal cases in 2000, they have handed down at least ten death sentences.³⁹ Of these, one has been carried out; five have been overturned on appeal; and, at the time of writing, four are still in appeal. Those sentenced to death include four women and six men. The offenses for which they have been sentenced to death have included murder, sodomy, and adultery.

Women have been disproportionately affected in adultery cases, because of different standards of evidence required: a man facing charges of adultery must have been seen in the act by four independent witnesses before he can be convicted, whereas a woman can be found guilty on the basis of pregnancy alone.⁴⁰

Sodomy, defined as "carnal intercourse against the order of nature with any man or woman,"⁴¹ is also punishable by death by stoning. In practice, most of the sodomy cases which have come before the Shari'a courts have not been about consensual, sexual activity between adults but rather allegations of adults sexually abusing children; Human Rights Watch is not aware of anyone sentenced to death for sodomy with an adult.

³⁸ *Zina* is defined as follows in the Zamfara State Shari'a Penal Code: "Whoever, being a man or a woman fully responsible, has sexual intercourse through the genital of a person over whom he has no sexual rights and in circumstances in which no doubt exists as to the illegality of the act, is guilty of the offence of zina." Zamfara State Shari'a Penal Code Law 2000, Section 126.

³⁹ This is the number of death sentences recorded by Human Rights Watch on the basis of its own research and cases reported by Nigerian lawyers and nongovernmental organizations. Given the absence of reliable official statistics and the poor level of monitoring of cases across the northern states, it is possible that there have been other cases.

⁴⁰ Human Rights Watch is not aware of any case in Nigeria where a man has been found guilty of adultery on the basis of the testimony of four independent witnesses. In the cases of Ahmadu Ibrahim, who was sentenced to death for adultery in Niger State, and Yunusa Chiyawa, who was sentenced to death for adultery in Bauchi State, the men's own confessions were the basis for their conviction.

⁴¹ Section 130 of the Zamfara State Shari'ah Penal Code Law, 2000. A similar definition is included in other states' penal codes.

There are variations in the punishments for sodomy in the different states' codes. Some, such as the Kebbi State code, state categorically: "Whoever commits the offence of sodomy shall be sentenced to death by stoning."⁴² Others provide alternative punishments. For example the Zamfara and Kano state codes specify that if the defendant is married, they should be sentenced to death by stoning, but if they are not married, they should be sentenced to flogging.⁴³ The Bauchi State code is less specific: "Whoever commits the offence of sodomy shall be punished with death by stoning (*rajm*) or any other means decided by the state."⁴⁴

The death penalty cases which have attracted the most public attention so far have been the cases of two women sentenced to death by stoning for adultery, Safiya Hussein in Sokoto State, and Amina Lawal in Katsina State. Both these cases, described below, elicited strong international outrage. In both cases, the men alleged to have been involved in the adultery were let off for lack of evidence, illustrating the inequality of men and women before the law and the discrimination against women resulting from the different standards of evidence required.

In the High Courts, where all non-Shari'a capital cases are heard, legal representation for defendants is mandatory in death penalty cases. No such provision exists under the Shari'a system in operation in Nigeria. In almost all the Shari'a death penalty cases so far, the defendants have been tried in the court of first instance (lower or upper Shari'a court) without a lawyer. Lawyers have only been able to intervene at the appeal stage. In several cases, they have been successful in obtaining a reversal of the judgment on appeal, but this does not compensate for their absence during the trial of first instance, nor is there any guarantee that in future cases, courts of appeal will always rule in favor of the defendant. Often judges have not informed the defendants of their right to legal representation, nor have they explained to them clearly the possible consequences of confessing in relation to the likely sentence—a point of critical importance given that the majority of defendants are poor, illiterate, and unfamiliar with the law.

Shari'a courts have continued to hand down death sentences (the last recorded case was in December 2003), but there appears to be a reluctance on the part of state governments to see these sentences carried out.⁴⁵ To date, Sani Rodi in Katsina State,

⁴² Section 132 of the Kebbi State Penal Code (Amendment) Law 2000.

⁴³ Section 134 of the Zamfara State Shari'ah Penal Code Law, 2000, and section 129 of the Kano State Shari'a Penal Code Law 2000.

⁴⁴ Section 134 of the Bauchi State Shari'ah Penal Code Law 2001.

⁴⁵ While state governors dictate, to a large extent, the direction in which Shari'a evolves in their state, it is not always possible to establish a direct link between the views of state governors and the number of death sentences handed down by Shari'a courts in their state. For example, Shari'a courts in Bauchi State have

whose case is described below, is the only person to have been executed under Shari'a. Several other sentences have been overturned on appeal, on the grounds of numerous irregularities and errors by the courts of first instance. In yet other cases, such as that of the couple in Niger State (see below), the appeal hearings and decision of the court of appeal have been repeatedly postponed. Most observers and lawyers following these cases do not expect the Shari'a state court of appeal to uphold these death sentences. Some believe that the repeated adjournments are part of a deliberate strategy on the part of the judiciary and the state government to avoid making a decision on these cases. These prolonged delays cause considerable anxiety and psychological suffering to the defendants.

To date, no death penalty case tried under Shari'a has reached the Federal Court of Appeal. Nigerian observers, including lawyers, agree that should that happen, it is highly unlikely that the Federal Court of Appeal would uphold the sentence. A similar favorable outcome would be expected from the Supreme Court.

In the second half of 2003, the federal government, through the Attorney General and Minister of Justice, launched a public debate on the future of the death penalty in Nigeria, soliciting opinions from across Nigerian society. In November 2003, it set up a National Study Group on the Death Penalty to consider the arguments for and against retaining the death penalty, to consult with different sectors of the public, and to report back to the government with recommendations. The group's members included several human rights activists, academics, and other members of civil society.⁴⁶ They finished their deliberations at the end of June 2004 and were expected to finalize their report by September 2004. A debate on the death penalty was also initiated in the National Assembly. Inevitably, these deliberations have overlapped with the less formal and more impassioned debates about Shari'a. Some Muslims have already voiced their opposition to what they see as an underhand attempt by the federal government to call into question the existence of Shari'a by opening up the debate on the death penalty overall. They have stated their resolve to keep Shari'a intact, regardless of the outcome of the debates.⁴⁷ It seems likely that the controversy around Shari'a and the outcry following sentences of death by stoning were among the factors that prompted the Nigerian government to launch this public debate. Whatever the reasons, this has been a

sentenced three people to death by stoning, yet the Bauchi State governor is not known to have a hardline position and has been criticized for not "caring enough about Shari'a." Human Rights Watch interview, Kano, December 13, 2003.

⁴⁶ See for example "Government raises panel to review death penalty," *The Guardian* (Lagos), November 5, 2003.

⁴⁷ See for example "Don't stop death penalty, FG urged," *ThisDay* (Lagos), September 5, 2003, and "Nigeria: Muslim leader warns against moves to abolish death penalty," *The Guardian*, September 12, 2003.

welcome opportunity to consider in a wider sense the arguments for and against the death penalty, and to encourage reflection on these issues within Nigeria as a whole, well beyond the context of Shari'a.⁴⁸

Case study: Fatima Usman and Ahmadu Ibrahim (Niger State)

One of the cases which illustrates virtually the full range of human rights violations described in this report is that of Fatima Usman and Ahmadu Ibrahim, a young couple from the village of Lambata, Niger State. Both were sentenced to death by stoning for adultery. At the time of writing, their case is still in appeal. The problems illustrated in this case include the criminalization of consensual sexual relations between adults, use of the death penalty, lack of legal representation, denial of information about the charges, court decisions in violation of due process, including changes in the charges and retroactive application of the law, and corruption within the judiciary.

Fatima Usman, aged twenty-eight, had been married previously and had four children from her former husband, who divorced her a few years before the case began. Following the divorce, she began a relationship with Ahmadu Ibrahim, a neighbor aged thirty-two, who was also married, with two children. Both come from poor family backgrounds; Ahmadu Ibrahim earned his living loading firewood. According to Fatima Usman, Ahmadu Ibrahim promised to marry her, but when she became pregnant, he changed his mind. Ahmadu Ibrahim claimed that he had planned to marry her, but that his own wife refused⁴⁹ and that Fatima Usman's father didn't want her daughter to marry him because he was too poor. Fatima Usman's father then arranged for her to marry another man, who was not aware that she was pregnant from her relationship with Ahmadu Ibrahim. Once her new husband discovered that she was pregnant, and Fatima Usman herself confirmed that the baby was not his, he dissolved the marriage. Fatima Usman's father then put pressure on Ahmadu Ibrahim to accept responsibility for the baby. Ahmadu Ibrahim paid 5,000 naira (approximately US\$ 35) but was not able to pay any more. Fatima Usman's father arranged for her to marry a third man, after the baby was born. Ahmadu Ibrahim said he could not afford to take care of the baby because it was sick.⁵⁰

⁴⁸ Some Nigerian human rights organizations have intensified their campaigns against the death penalty in Nigeria. See "Handbook on death penalty (towards a moratorium in Nigeria)," Human Rights Law Service (HURILAWS), Lagos, June 2003, and "Who has the right to kill – a report on death penalty in Nigeria 2001-2003" (LEDAP).

⁴⁹ In parts of Nigeria, it is common for men to have several wives. A Muslim man is allowed to marry a maximum of four wives.

⁵⁰ Human Rights Watch interviews, Lambata, August 6, 2003.

Fatima Usman's father took Ahmadu Ibrahim to court in the hope of forcing him to accept at least financial responsibility for the baby. Ahmadu Ibrahim and Fatima Usman both appeared in Upper Area Court Gawu Babangida, in Gurara local government, and were charged with adultery, even though the father's original claim had related to financial support for the child. Both admitted that they had been involved in a sexual relationship. After several adjournments, on August 5, 2002, the judge sentenced them to five years' imprisonment or a 15,000 naira fine each (approximately US\$ 107). They were both sent to prison in Suleja because they were unable to pay the fine. Neither of them had legal representation during the trial. According to Ahmadu Ibrahim, the judge did not tell them they could have a lawyer and did not explain the charges.⁵¹ While Fatima Usman was in prison, the baby fathered by Ahmadu Ibrahim died.

About three weeks later, on August 27, 2002, the same judge changed the sentence on the basis that there was now Shari'a in Niger State, and sentenced both Fatima Usman and Ahmadu Ibrahim to death by stoning.⁵² Neither of the defendants were present in the court when the new sentence was announced and they were not directly informed of this development. Fatima Usman explained how she found out: "We didn't know the judge had reversed the case to stoning [...] We were taken back to the same court. They didn't tell me anything. They just asked me to sign a paper. I didn't know what it was. They didn't read it to me. That same day, I knew we were sentenced to stoning [...] Some people in the court said: 'This is the woman who will be stoned to death.' I overheard it as they were talking among themselves. [...] I felt very scared. I had not been aware that it was a possibility."⁵³ Ahmadu Ibrahim was not directly informed either: "I didn't know what was happening with the case. I spent eighty-three days in prison. The day I was bailed, I found out about the change of sentence. A senior official in the prison told me. He said I was supposed to be killed but I was now on bail. I felt very scared and shocked."⁵⁴ Lawyers and friends who visited Fatima Usman and Ahmadu Ibrahim in prison were given strict instructions by prison officials not to tell them that they had been sentenced to death.⁵⁵ The prison superintendent would only allow them to visit Fatima Usman if they did not mention anything about the death sentence. He insisted that the death sentence was just a rumor, even though it had

⁵¹ Human Rights Watch interview, Lambata, August 6, 2003.

⁵² Niger State has not introduced a separate Shari'a penal code or code of criminal procedure, but amended the existing Penal Code to make it conform to Shari'a. In November 2002, the Shari'a Administration Law changed the status of area courts to Shari'a courts.

⁵³ Human Rights Watch interview, Lambata, August 6, 2003.

⁵⁴ Human Rights Watch interview, Lambata, August 6, 2003.

⁵⁵ Human Rights Watch interviews, Lambata, August 6, 2003, and Abuja, November 15, 2002.

already been announced in the media. One of the lawyers who visited her in prison was only allowed to talk to her in the presence of prison officials.⁵⁶

After the judge had changed the sentence, several lawyers became involved in the case and assisted Fatima Usman and Ahmadu Ibrahim in preparing an appeal. The appeal was filed at the Shari'a court of appeal in the state capital Minna on September 17, 2002. On October 17, 2002, Fatima Usman and Ahmadu Ibrahim were released on bail. The court of appeal held an initial hearing on June 4, 2003, but the case was repeatedly adjourned, most recently in April 2004.

The reason why the judge decided to change the sentence, and on what authority he changed the substance of the charges, remains unconfirmed. This decision did not follow any recognized process; it also violated the principle of non-retroactivity. According to sources close to the defendants, corruption played a part in the development of the case from the beginning, and the judge who sentenced them may have been bribed and put under pressure. Fatima Usman's father, who had originally initiated the court case, had been advised by court officials that he could win a large sum by taking Ahmadu Ibrahim to court, possibly as much as 150,000 naira (approximately US\$ 1,700). He said the court registrar had told him "he would make sure he did what I wanted him to do."⁵⁷ After the first court appearance, at least one other court official asked Fatima Usman's father to give them money so that they could persuade the judge to rule in his favor. He eventually parted with a total of approximately 16,000 naira (about US\$ 115) and had to sell his house, believing he would win substantial damages if he won the case.⁵⁸ When he failed to win such a sum after the first judgment, Fatima Usman's father went back to the court officials to complain. They told him that the case had been tried under the old penal code, whereas it should have been tried under Shari'a. They reportedly called the judge and told him so. It was after this that the judge amended the sentence. Yet the first judgment was already being implemented, and both Fatima Usman and Ahmadu Ibrahim had started serving their prison sentences.⁵⁹

When Human Rights Watch met the judge in August 2003, he refused to talk about any aspect of the case, even to confirm information which was already in the public domain. He said: "I don't have much to say as I've finished with the case. It is now in appeal. All orders and proceedings are with the court of appeal and the lawyers. I won't talk about it as I'm no longer responsible for it. All what I did is documented in the records

⁵⁶ Human Rights Watch interview, Abuja, November 15, 2002.

⁵⁷ Human Rights Watch interview, Lambata, August 6, 2003.

⁵⁸ Ibid.

⁵⁹ Human Rights Watch interview, Minna, August 7, 2003.

given to the Shari'a court of appeal." He later added: "We work for the government. We do what they tell us to do."⁶⁰

There were indications that the case had become politicized immediately after the sentence was changed. Jibril Kallamu, a lawyer who is also special assistant to the Niger state governor, became involved in providing legal counsel to the defendants after the judgment was passed. Immediately after the death sentence was announced, and after the defendants were granted bail, Jibril Kallamu took Fatima Usman away from her home area to the town of Kontagora, about 200 kilometers away, without her consent or that of her family, and kept her there for several weeks. She was effectively abducted and was not allowed to go out; nor was she told why she had been taken there. Her family and friends were not informed of her whereabouts until they were eventually allowed to visit her after two or three weeks. It would appear that the main reason for whisking her away straight after the death sentence was pronounced was to prevent her from talking to the press, to avoid the negative publicity for the government which had surrounded earlier cases of stoning sentences. It was not clear whether Jibril Kallamu took this initiative in his personal or official capacity. Fatima Usman was eventually allowed to return home after she had given birth to a baby conceived with her last husband, but only after repeated pressure from some of the other lawyers following the case.

When Human Rights Watch researchers asked Jibril Kallamu what had happened during this period, he said that Fatima had been taken to a private individual's house in Kontagora "for her own benefit [...] We gave her fitting accommodation so she could give birth in a comfortable place [...] She was free. She was not incarcerated. She could go anywhere she wanted. Her parents always visited her. The chief of the area is the Suleja Emir. He made the proposal to keep her there, with the consent of her parents and her own consent."⁶¹

This version of events was contradicted by Fatima Usman's own account and the testimonies of relatives, friends, and lawyers who had tried to establish her whereabouts. When her parents were eventually allowed to visit her in Kontagora, Fatima Usman cried and said she wanted to come home, indicating that she was not there of her own free will.⁶² She herself stated: "The lawyer Kallamu took me to Kontagora and kept me there for two or three months. I was kept in somebody's house. I asked why. He said there

⁶⁰ Human Rights Watch interview, Upper Shari'a court New Gawu, August 6, 2003.

⁶¹ Human Rights Watch interview, Suleja, August 7, 2003.

⁶² Human Rights Watch interview, Abuja, November 15, 2002.

was an order from the higher authorities to keep me there. He didn't specify who. I wasn't allowed to go out. My parents insisted on visiting. Eventually Kallamu brought them there, after two weeks. No one knew where I was for two weeks. My father came but because he didn't have money for transport, he only came twice. My mother couldn't come. The person whose house it was told me they didn't want me to talk to the press. But I hadn't talked to any press before."⁶³ Fatima Usman's father confirmed that for two weeks, he didn't know where she was: "I went to Kallamu and asked him where he had taken her and that I wanted to see her. After pressure, he took me to Kontagora and I saw Fatima. Kallamu didn't explain anything. He didn't say how long she would stay there. It was only thanks to [the other lawyers] that we could know what was happening. [They] forced him to release my daughter."⁶⁴ Other lawyers and individuals concerned for Fatima's safety also confirmed that for several weeks, her whereabouts remained unknown.⁶⁵

Human Rights Watch believes there may have been a conflict of interest between Jibril Kallamu's role as special assistant to the Niger state governor and his role as a defense lawyer for Fatima Usman and Ahmadu Ibrahim. When Human Rights Watch researchers met him in August 2003, he said that because of his position in the state government, he was no longer personally handling the case, but that other lawyers in his chambers were.⁶⁶ However, a nongovernmental human rights organization which has followed the case closely told Human Rights Watch in December 2003 that Jibril Kallamu was still the lawyer dealing with the case.⁶⁷

In December 2003, Fatima Usman and Ahmadu Ibrahim were not aware of any further developments in their case and no date had been set for the judgment of the court of appeal. In March 2004, it was reported that the Shari'a court of appeal had once again postponed its hearing on the case, this time until April 21, 2004. The hearing was then postponed again until May 6, 2004.⁶⁸ By July 2004, there had been no further progress. However, in a surprising development, it was reported that the state counsel for Niger State had claimed that the Shari'a court did not have the power to hear the case.⁶⁹ If this

⁶³ Human Rights Watch interview, Lambata, August 6, 2003.

⁶⁴ Human Rights Watch interview, Lambata, August 6, 2003.

⁶⁵ Human Rights Watch interview, Abuja, November 15, 2002.

⁶⁶ Human Rights Watch interview, Suleja, August 7, 2003.

⁶⁷ Human Rights Watch interview, Lagos, December 9, 2003.

⁶⁸ See "Appeal of Nigerian stoning case couple postponed," Agence France-Presse, March 24, 2004, and "Appeal of Nigerian stoning case couple postponed again, Agence France-Presse, April 21, 2004.

⁶⁹ Human Rights Watch interview, Abuja, June 30, 2004.

line of argument is pursued, it could have major implications for this and other similar cases.

Death sentences in Bauchi State

At least three men have been sentenced to death by stoning in Bauchi State. Two have been acquitted and the third case is in appeal at the time of writing.

Yunusa Chiyawa

Yunusa Rafin Chiyawa was the first man to be sentenced to death for adultery. He was found guilty and sentenced to death by stoning by a lower Shari'a court in Ningi, Bauchi State, in June 2002. His conviction was reportedly based on his confession. The woman with whom he was accused of having sexual relations was cleared after claiming she had been hypnotized.⁷⁰ This outcome was unusual compared to some other adultery cases, where typically the women have been found guilty and sentenced while the men have been set free. Following the trial, Yunusa Chiyawa filed an appeal and withdrew his confession. Almost a year and a half later, in November 2003, the Upper Shari'a Court ruled that in the light of the withdrawal of his confession, there was insufficient evidence against him, and it overturned the death sentence.⁷¹

Jibrin Babaji

On 23 September 2003, Jibrin Babaji, a man in his early twenties from a poor background, was found guilty of sodomy with three children under the age of eighteen and sentenced to death by stoning by Shari'a Court I, Kobi, Bauchi State.

Jibrin Babaji confessed to the offense and the judge sentenced him to death. He also sentenced the children who had allegedly accepted money from Babaji in return for sex to six strokes of the cane. One of the three boys was flogged straightaway; the other two were not, as they were not present in court. They have since reportedly appealed the judgment.⁷²

⁷⁰ Section 75 of the Bauchi State Shari'ah Penal Code Law, 2001, states: "Nothing is an offence, which is done by a person who, at the time of doing it, by reason of unsoundness of mind, or sleep, is incapable of knowing the nature of the consequences of the act; or he is doing what is either wrong or contrary to the law."

⁷¹ See for example "Shari'a court lifts stoning sentence on Nigerian 'adulterer'," Agence France-Presse, November 14, 2003.

⁷² Human Rights Watch interview, Lagos, July 7, 2004.

The case against Jibrin Babaji was initiated by relatives of the children; they reported Jibrin Babaji to the hisbah, who then handed him over to the police. He was not caught in the act. It is not known whether he confessed to the hisbah or the police, but on the basis of numerous other testimonies of confessions extracted under torture (see below), a conviction on the basis of such a confession alone could not be judged safe.

In common with other similar cases, Jibrin Babaji did not have legal representation or access to legal advice before or during his trial by the lower Shari'a court. The trial was completed within a day and, as in other trials in lower Shari'a courts, a single judge convicted him. Through the efforts of a human rights organization, lawyers then intervened on his behalf and filed an appeal at the upper Shari'a court. An initial hearing took place on December 10, 2003. At the first appeal hearing, a bus full of hisbah arrived at the court premises and were heard making comments such as "he's confessed: what is there to do?" and "the judgment can't be changed."⁷³ A second hearing took place on December 16 and a third on December 31.

On March 9, 2004, the upper Shari'a court acquitted Jibrin Babaji, on the grounds that he had not been granted a fair trial. Among other procedural irregularities, the court noted that his right to legal defense had not been respected.

In this case, as in the case of Umar Tori below, Human Rights Watch is concerned not only about the imposition of the death penalty on the defendant and absence of due process during the trial, but about the fact that the children were also punished. Courts should never punish children for being victims of sexual abuse, regardless of whether they received money or other favors from the adult. The Convention on the Rights of the Child, which Nigeria has ratified, states that courts should always take into account the best interests of the child.⁷⁴ The Shari'a Penal Code of Bauchi State specifies that "a consent is not such a consent as is intended by any section of this Shari'a Penal Code, if the consent is given [...] by a person who is under the age of maturity."⁷⁵

⁷³ Ibid.

⁷⁴ Article 3 (1) of the Convention on the Rights of the Child states: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

⁷⁵ Section 39 of the Bauchi State Shari'ah Penal Code Law, 2001. The age of maturity is not defined. Some other states' Shari'a penal codes contain a slightly different wording. For example, the Shari'a penal code of Zamfara State specifies that the consent of a "a person who is under eighteen years of age or has not attained puberty" is not considered as consent. Section 38 (c) of Zamfara State Shariah Penal Code Law, 2000.

Umar Tori

The most recent death sentence in Bauchi State is that of Umar Tori, who was found guilty of incest with his stepdaughter, aged about fifteen. On December 29, 2003, a Shari'a court in Alkalere, Bauchi State, sentenced him to death by stoning. His stepdaughter, who claimed she had been raped, was sentenced to one hundred lashes for pre-marital sex. They did not have any legal representation during their trial. Lawyers have since filed an appeal on their behalf to the upper Shari'a court.

The execution of Sani Yakubu Rodi (Katsina State)

Sani Yakubu Rodi was the first and, to date, the only known person to be executed after being tried by a Shari'a court. He did not have legal assistance or representation at any stage of his trial and did not appeal against the sentence. His case is the starkest illustration of the consequences of absence of legal representation and of the vulnerability of defendants to pressure and bad advice.

Sani Yakubu Rodi, an unemployed man aged about twenty-one from Funtua, Katsina State, was found guilty of the murder of a woman in her thirties and her two children aged four and three. The victims were stabbed to death at their home on June 8, 2001. Sani Yakubu Rodi was reportedly caught at the scene of the murder and arrested by the police. In the initial hearing in the Shari'a court on July 5, 2001, he pleaded not guilty, but in a subsequent hearing on September 4, he changed his plea to guilty. He reportedly said he would defend himself and did not request a lawyer. On November 5, 2001, he was sentenced to death. He did not appeal against the sentence. His execution was authorized by the governor of Katsina State, and he was executed by hanging on January 3, 2002. Even though he was tried in Katsina State, he was hanged in neighboring Kaduna State prison, as this is the only center equipped to carry out executions in northern Nigeria.

Sources in Katsina reported that members of his family had put pressure on Sani Yakubu Rodi not to appeal, on the basis that a judgment by a Shari'a court was the will of God and should not be challenged.⁷⁶ A Katsina-based journalist who attended the trial said that the defendant's grandfather had acted as his spokesperson during parts of the hearing. When the judge asked whether Sani Yakubu Rodi wished to appeal, his grandfather reportedly said that if the court was satisfied with the evidence, he would not appeal because according to the Qur'an, whoever kills should be killed. When the same journalist interviewed his grandfather, he accepted that his grandson was guilty; he confirmed that he would not appeal because the death sentence was God's ruling and to

⁷⁶ Human Rights Watch telephone interviews with sources in Kaduna and Katsina, January 2002.

appeal would mean defying God's wishes.⁷⁷ It was not clear whether Sani Yakubu Rodi himself had been allowed or able to exercise his own judgment on whether to appeal; nor is it clear why he changed his plea from not guilty to guilty, or on whose advice.

Attahiru Umaru (Kebbi State)

On September 12, 2001, Attahiru Umaru, a man in his thirties, was sentenced to death by stoning for sodomy by Upper Shari'a Court I in Birnin Kebbi, capital of Kebbi State. He was accused of sexually abusing a seven-year-old boy. Attahiru Umaru confessed to the crime. He did not have legal representation during the trial. He has since appealed against the sentence to the Kebbi State Shari'a Court of Appeal. By September 2003, his appeal was still pending.⁷⁸

Sarimu Mohammed Baranda (Jigawa State)

In May 2002, a Shari'a court in Dutse, capital of Jigawa State, sentenced Sarimu Mohammed Baranda to death by stoning for raping a nine-year-old girl. He did not have a lawyer during his trial; he pleaded guilty and even after being sentenced to death, he said he did not want to appeal. People who attended the trial described him as a poor man, who was very confused and suffering from mental illness. Eventually, in September 2002, it was reported that members of his family had persuaded him to file an appeal, even though the thirty-day period for appeal had long since elapsed. A lawyer assisted with the preparation of the appeal and argued that the defendant was insane.⁷⁹ The Shari'a Court of Appeal in Dutse accepted his appeal and overturned the death sentence in August 2003.

In the period following his sentence and before he was finally persuaded to appeal, there were genuine fears that Sarimu Mohammed Baranda's death sentence might be carried out. His own reluctance to appeal, and, according to observers of the trial, his fragile mental health all contributed to these fears. Several comments made by a state government official to journalists indicated a willingness on the part of the government to allow the defendant to be executed. Usman Dutse, spokesman for the Jigawa state governor, was quoted as saying: "It's not the role of the governor to decide, it's for the Shari'a court. Once the decision has been made, it's a divine decision;"⁸⁰ and "Nobody has faulted the judgment of the court so he will certainly be stoned to death because that

⁷⁷ Human Rights Watch telephone interview, January 7, 2002.

⁷⁸ Human Rights Watch has not been able to obtain more recent information on this case.

⁷⁹ Most of the state Shari'a penal codes contain a section stating that an act committed by a person who is insane or involuntarily intoxicated should not be considered an offense.

⁸⁰ See "Second Nigerian stoning case stirs Shari'a row," Agence France-Presse, August 27, 2002.

is what Shari'a says [...] I cannot say exactly when he will be executed, but this is a Shari'a state and the governor has said nobody will be allowed to violate the laws of the land and go scot free."⁸¹

Safiya Hussein (Sokoto State)

The case of Safiya Hussein was the first to propel Shari'a in Nigeria into the international limelight and provoked a storm of outrage. It became a test case for others which followed and symbolized the harsh discrimination against women inherent in some of the Shari'a legislation.

Safiya Hussein, a divorced woman in her thirties from a poor background, was found guilty of adultery and sentenced to death by stoning by the Upper Shari'a Court in Gwadabawa, Sokoto State, on October 9, 2001. She did not have legal representation during her trial. Yakubu Abubakar, the man with whom she was alleged to have committed the adultery, denied the offense and was acquitted for lack of evidence. Safiya Hussein was convicted on the basis that her pregnancy constituted evidence of adultery, and on the basis of her confession. The court rejected a suggestion that a DNA test be conducted to establish if Yakubu Abubakar was the father of Safiya Hussein's child, on the grounds that there was no reference to such tests in Shari'a.⁸²

Following the sentence, several lawyers and nongovernmental organizations stepped in and helped file an appeal, which was heard in October 2001. On March 25, 2002, the Shari'a State Court of Appeal, composed of four judges, overturned the death sentence. One of the grounds of appeal, which was accepted by the court of appeal, was that the Shari'a legislation under which she had been sentenced was not yet in force at the time the alleged offense was committed, and could not be applied retroactively. The alleged offense took place in December 2000, whereas the Shari'a Penal Code and Criminal Procedure Code came into force in January 2001. The court of appeal also conceded that there had been several other areas in which due process has not been observed during the trial, including the failure of the upper Shari'a court judge to explain the nature of the offense clearly to the defendant and to inform her of her right to legal representation; and the fact that the court had convicted her despite the withdrawal of her confession.⁸³

⁸¹ See "Nigerian to die by stoning for raping girl of 9," Reuters, August 27, 2002.

⁸² See "Safiya's parents plead for their daughter," *The Guardian*, December 16, 2001.

⁸³ For details of the judgement, see "Safiyatu's case," Women's Aid Collective (WACOL), 2003. For further background on the case, see Chapter 3 of "Baobab for Women's Human Rights and Shari'a Implementation in Nigeria: The journey so far," Baobab for Women's Human Rights, Lagos, 2003; and "At last, court frees Safiya," *The Punch*, March 26, 2003.

Amina Lawal (Katsina State)

Amina Lawal's case was similar in many respects to that of Safiya Husseini and attracted an even higher level of international attention. The trial was marked by numerous irregularities and failure to follow due process. Although Katsina State adopted a Shari'a Penal Code when Shari'a was introduced in the state in 2002, there was still no Shari'a code of criminal procedure at the time of Amina Lawal's trial.

Like Safiya Husseini, Amina Lawal, a divorced woman in her thirties from a poor background, was charged with adultery for having a child out of wedlock. She was tried by a lower Shari'a court in Bakori, Katsina State, and on March 22, 2002, the judge sentenced her to death by stoning. As in the case of Safiya Husseini, her pregnancy and her confession were considered sufficient evidence to convict her. Yahaya Abubakar, the man who was allegedly the father of the baby, denied any involvement and was discharged for lack of evidence. Amina Lawal did not have legal representation during her trial and was not informed of her right to engage a lawyer; nor was she aware of the consequences of confessing to the offense. Once the case became widely publicized, several lawyers and nongovernmental organizations intervened on her behalf and helped lodge an appeal with the Upper Shari'a Court in Funtua. On August 19, 2002, the Upper Shari'a Court upheld the death sentence, to further international public outcry. When Amina Lawal's lawyers raised arguments about the infringements of her rights under the Nigerian constitution, the judge said he was not bound by the constitution, only by Shari'a. However, his judgment even failed to respect the principles of Shari'a, since he ruled that she had no right to withdraw her confession—a right provided for under Shari'a.⁸⁴

A further appeal was then filed with the State Shari'a Court of Appeal. On September 25, 2003, the State Court of Appeal overturned the death sentence on several grounds, including that there had been insufficient evidence to convict Amina Lawal and that she had a right to withdraw her confession.⁸⁵ Four of the five judges in the court of appeal were in agreement on accepting the grounds for her appeal. One judge dissented and argued that Amina Lawal had been found guilty, illustrating further the risks of allowing only one judge to try such cases, as in the lower and upper Shari'a courts.

⁸⁴ Human Rights Watch interviews, Abuja, August 7 and 8, 2003.

⁸⁵ For details of some of the other grounds for appeal, see Chapter 3 of "Baobab for Women's Human Rights and Shari'a Implementation in Nigeria: The journey so far," Lagos, 2003. The judgement of the court of appeal was also covered in many Nigerian newspapers, for example "At last, court frees Safiya," *The Punch*, March 26, 2002.

Other adultery cases

There have been a number of other cases of women accused of adultery who, if found guilty, could have faced a death sentence. For example, in January 2002, Hafsat Abubakar, aged about eighteen, was tried by the Upper Shari'a Court 2 in Sokoto State after having a baby out of wedlock. Unusually, in this case, the defendant was able to secure the assistance of a lawyer through the nongovernmental organization Baobab, before the court made its final judgment. The court acquitted her on the basis that the evidence against her was insufficient and contradictory, and that the baby could have been that of her former husband, rather than her lover—partly on the basis of the theory of the “sleeping embryo.”⁸⁶ Within the Maliki school of thought, there is a provision that a baby conceived within five years of a woman's marriage can be considered as fathered by the husband, even if the couple are divorced.

In a similar case, Maryam Abubakar Bodinga was tried by Upper Shari'a Court 11 in Sokoto State on charges of adultery in September 2002; she was also discharged after the court ruled that her baby could have been conceived with her former husband.⁸⁷

Amputation sentences

Dozens of people have been sentenced to amputation by Shari'a courts since 2000, the majority charged with theft. Under the Shari'a penal codes of their respective states, most were sentenced to amputation of the right hand. All the defendants in cases known to Human Rights Watch are men; almost all are from a poor background. Amputation sentences have been handed down by Shari'a courts in several states, including Zamfara, Sokoto, Kano, Kebbi, Katsina, Kaduna, and Bauchi.

According to the information available to Human Rights Watch, there have been more than sixty amputation sentences since 2000. However, as with other types of sentences passed by Shari'a courts, accurate statistics are unavailable, and cases are often unreported, so the real figure may be higher. It has also been difficult to confirm the details and progress of each case. There is no central record of cases and no concerted attempt to record and maintain an overview of cases, either within state governments' ministries of justice or even among nongovernmental organizations.

⁸⁶ For further details of the case, see Chapter 3 of “Baobab for Women's Human Rights and Shari'a Implementation in Nigeria: The journey so far,” Baobab for Women's Human Rights, Lagos, 2003. Also see press articles including “Adultery: Shari'a court frees Hafsat,” *The Punch*, January 24, 2002, and “Nigeria's 'adulteress' set free,” BBC website, <http://news.bbc.co.uk>, January 23, 2002.

⁸⁷ See Chapter 3 of Baobab for Women's Human Rights report, as above; and Human Rights Watch interview, Abuja, November 15, 2002.

When Human Rights Watch researchers asked state government officials how many amputation sentences had been passed in their state, they were either given inaccurate or incomplete information, or officials were not sufficiently informed to give any details at all. For example in Kano State, in July 2003, the chief registrar at the Shari'a court of appeal told Human Rights Watch that "to the best of [my] knowledge, no one has been sentenced to amputation in Kano;" he said he had not heard of the case of two men who had been sentenced to amputation just one month before.⁸⁸ The Solicitor General at the Kano state ministry of justice told Human Rights Watch that there had been no more than five amputation cases.⁸⁹ However, Human Rights Watch's research revealed that there had been at least ten amputation sentences in Kano, seven passed under the former governor Rabi'u Kwankwaso, and three under governor Ibrahim Shekarau, elected in April 2003.⁹⁰ The real number may be even higher. When Human Rights Watch asked the deputy governor whether there had been amputation sentences passed in Kano State, he replied: "There must be." When asked how many there had been, he said that he had not bothered to find out.⁹¹

To date, Human Rights Watch has only been able to confirm two cases where amputations have been carried out, both in Zamfara State. A third amputation was reported to have taken place in Sokoto State in mid-2001, but Human Rights Watch was not able to obtain independent confirmation of the case or the circumstances of the trial.⁹²

Execution of amputation sentences in Zamfara State

Two men have had their hands amputated in Zamfara State. Buba Kare Garki, or Buba Bello, known as Jangebe, from Jangebe village, Talata Mafara local government, Zamfara State, was tried by a Shari'a court in Talata Mafara and sentenced to amputation in February 2000; he was found guilty of stealing a cow. He did not have legal representation and did not appeal against the sentence. After the state governor authorized the punishment, his right hand was amputated in the state hospital at Talata Mafara on March 22, 2000; the state governor's personal doctor was reportedly among

⁸⁸ Human Rights Watch interview, Shari'a Court of Appeal, Kano, July 31, 2003.

⁸⁹ Human Rights Watch interview, Kano, July 30, 2003.

⁹⁰ Human Rights Watch interviews, Kano, July and December 2003. Those sentenced under the former governor are Danladi Dahiru, Haruna Bayero, Abubakar Mohammed, Mohammed Bala, Haruna Musa, Aminu Ahmed, and Ali Liman. The three sentenced under the current governor are Allasan Ibrahim and Hamza Abdullahi, from Dambatta local government, and a man from Wudil local government reportedly sentenced for stealing a goat in early June 2003.

⁹¹ Human Rights Watch interview with Magaji Abdullahi, Deputy Governor of Kano State, Kano, July 31, 2003.

⁹² Human Rights Watch interview, Kano, July 30, 2003, and media sources.

those who carried out the amputation.⁹³ In April 2001, Lawali Inchi Tara had his hand amputated after he was found guilty of stealing bicycles, in Gummi local government.

The two amputations in Zamfara State attracted a high level of publicity, inside and outside Nigeria. A resident of Gusau, the state capital, told Human Rights Watch: “It was done dramatically. The governor wanted to prove a point to the world.”⁹⁴

When Human Rights Watch raised these cases with the Zamfara State Governor, Ahmed Sani, his comments confirmed that these two men’s hands had been sacrificed to his political interests. He admitted that he had given the orders for these amputations to be carried out for political reasons and that his political reputation depended on the outcome of these cases. Referring to the case of Jangebe, he told Human Rights Watch: “The people at that time really wanted Shari’a, therefore we had to implement the sentence.” He claimed that despite the judge’s wish to impose a more lenient sentence, Jangebe had confessed and “insisted.” He claimed that he had made every effort to provide a lawyer to Jangebe, but he had refused. “I personally sent several messengers to [him] asking him to appeal. [...] This was a test case for me. I wanted to exhaust all options. But the man said no, I don’t want to be a bad Muslim. I sent a lawyer to him for free. The man refused. After thirty days, people were counting the days and saying ‘let’s see if the governor is serious.’ The judges had to implement it.”⁹⁵

Referring to the case of Lawal Inchi Tara, Ahmed Sani claimed that while in prison, “he [Lawal Inchi Tara] started cutting off his own hand. He said it’s in God law and he believes in it.” He told Human Rights Watch that he had ordered the doctors to amputate his hand and gave a long explanation about the political difficulties he was facing at that time: “I was in a politically difficult position. The *ulama* [religious scholars] would have mobilized people against me and said this is not proper Shari’a. They could have unleashed trouble. It was a political crisis.”⁹⁶

It was widely reported that after the amputations, Jangebe and Lawal Inchi Tara were financially and materially rewarded for not appealing and for accepting the judgments. Both men (who were previously unemployed or had irregular earnings) were given money and jobs by the state government; one was employed by a school, the other by a

⁹³ The participation of physicians in torture and cruel, inhuman or degrading treatment or punishment goes against principles and guidelines on medical ethics adopted by the U.N. and international medical professional bodies, as outlined in Section XV of this report.

⁹⁴ Human Rights Watch interview, Gusau, August 1, 2003.

⁹⁵ Human Rights Watch interview with Ahmed Sani, Governor of Zamfara State, Gusau, August 4, 2003.

⁹⁶ Ibid.

hospital. According to residents of Zamfara State, Jangebe was given money, rice, and maize by the state government, after publicly stating that he was happy with Shari'a and welcoming the punishment after his hand was amputated.⁹⁷ A local journalist told Human Rights Watch that after the negative publicity surrounding the amputations, state government officials had tried to prevent the two men from talking to journalists and other visitors, and had given them instructions not to give interviews without government permission.⁹⁸

The Zamfara state governor's position on amputations gradually changed after these two cases. Faced with a flurry of negative publicity, he refrained from ordering any further amputations to be carried out, although several other people were sentenced to amputation of the right hand under Section 145 of the Shari'a Penal Code. He told Human Rights Watch: "There were one or two problems at the start because the system is new. [...] If this Shari'a system is assisted, then the contradictions will gradually be resolved, while meeting the aspirations of Muslims. Under Shari'a, we don't want to amputate or to stone."⁹⁹ The Zamfara state commissioner of justice and attorney general told Human Rights Watch candidly: "We are aware of the concerns. When Jangebe was amputated [...] we received a lot of letters from human rights groups. We realized the introduction of Shari'a would generate controversy."¹⁰⁰ He added: "The government has to look at all the angles before implementing it [...] We must be very careful and not rush into it. A confession alone is not enough. We need witnesses also. The system is gradually being improved. We correct mistakes as we go along."¹⁰¹

Prolonged detention of defendants sentenced to amputation

In early 2004, there were still twelve people in Zamfara prison who had been sentenced to amputation and did not know whether their sentences would be carried out or not. These prisoners have become hostages to the new political dilemma facing the state governor: he is unwilling to order their amputations to be carried out, yet is not prepared to order their release. When Human Rights Watch asked him how their cases would be resolved, he said: "Those in prison now are a test case: to show that the atmosphere conducive for amputations is not there. But if we release them, it will create chaos."¹⁰² He did not express concern for their plight in prolonged detention, nor for the fact that

⁹⁷ Human Rights Watch interviews, Gusau, August 1-4, 2003.

⁹⁸ Human Rights Watch interview, Gusau, August 1, 2003.

⁹⁹ Human Rights Watch interview with Ahmed Sani, Governor of Zamfara State, Gusau, August 4, 2003.

¹⁰⁰ Human Rights Watch interview with Mohammed Sani Takori, Commissioner of Justice and Attorney General, Zamfara State, Gusau, August 4, 2003.

¹⁰¹ Ibid.

¹⁰² Human Rights Watch interview with Ahmed Sani, Governor of Zamfara State, Gusau, August 4, 2003.

by his own admission, they were being used as tools to prove a political point. He said a commission of *ulama* was reviewing these and other cases, but it was not clear how far the commission had progressed or what time frame they had been given for their deliberations. It seemed that this indefinite “review” of amputation cases may have been a bureaucratic ploy on the part of the governor to prolong the delay and avoid having to take politically difficult decisions. By July 2004, lawyers had helped filed appeals on behalf of some of those sentenced, but there was still no progress on their cases.

A similar situation has been replicated in several other states, where state government officials have found themselves torn between the conflicting political imperatives of demonstrating their personal commitment to Shari’a and avoiding the negative publicity which surrounds the implementation of harsh punishments. Defendants tried by Shari’a courts have become the victims of these political contradictions. In December 2003, Human Rights Watch interviewed twenty-six prisoners who had been sentenced to amputation but whose sentences had not yet been carried out: twelve in Zamfara State, six in Kano State, and seven in Kebbi State. Other organizations and lawyers have reported that there were several prisoners in similar situations in other states, in particular in Sokoto and Katsina. In Kaduna State too, six men were sentenced to amputation by the Upper Shari’a court, Tudun Wada, in Zaria, in August 2003, and were still in prison one year later.¹⁰³ In some states, such as Bauchi, it was reported that several people sentenced to amputation had not been detained, but had been waiting for a prolonged period for the governor to make a decision on their cases.¹⁰⁴

Several of the twenty-six prisoners interviewed by Human Rights Watch had been sentenced more than two years earlier and had been waiting in prison since then, not knowing if or how their cases would be resolved. Six of them had been sentenced in 2001; nine in 2002; and eleven in 2003. At the time of writing, at least one of them, Lawali Dan Manga Dadin Duniya, sentenced on April 26, 2001, has been in Zamfara prison for more than three years. A number of other prisoners were released earlier in the year: for example, three men sentenced to amputation in January and February 2002—Haruna Musa, Aminu Ahmed, and Ali Liman—all detained in Goron Dutse prison, Kano State, were released on bail by the Upper Shari’a Court in Kofar Kudu, Kano State, in May and June 2003.¹⁰⁵

¹⁰³ Human Rights Watch interview, Kano, December 13, 2003, and press conference statement by the Civil Rights Congress “The Zaria 6: save them from amputation,” August 11, 2004. See also “Sharia appeal court to review conviction of six men,” *Vanguard*, August 17, 2004.

¹⁰⁴ Human Rights Watch interview, Abuja, August 8, 2003.

¹⁰⁵ Prison records, Goron Dutse Prison, Kano State, December 14, 2003.

The testimonies of the prisoners interviewed by Human Rights Watch were remarkably consistent and illustrate a range of concerns. All but one had been charged with theft. Most were accused of stealing basic household items and provisions, such as clothing, food, a mattress, plates, soap, and cigarettes; others were accused of stealing a sheep, money, a television set and video recorder, two sewing machines, and motorbikes. All were from poor backgrounds. Some said they had stolen the items because of poverty. One said he had stolen because he could not afford to buy medication to treat his asthma. Two co-defendants said they had stolen two pieces of clothing and seeds from their employer—totaling 5,000 naira (about US\$ 35)—because he had not paid them for their work. Under Shari’a, a person should not be sentenced to amputation if she or he was driven to steal because of poverty or harsh living conditions, or other extenuating circumstances—on the principle that the state has a responsibility to provide for every person’s basic needs. However, this principle was disregarded by the judges in these cases. In addition to those accused of theft, one man had been sentenced to amputation after he admitted cutting off the hand of a man he found in his house with his wife.

The trials of all twenty-six men failed to conform to due process in many respects. None of the defendants had legal representation in the lower or upper Shari’a courts which sentenced them. The majority of the defendants had had their statements extracted under torture by the police; in many cases, these confessions were then used as evidence and as the basis for their conviction. Several had been wrongly advised by police officers or prosecution officials that if they pleaded guilty, they would benefit from a lighter sentence, and took this advice on the basis that it was offered in good faith. Most of them were not even aware that they could be sentenced to amputation if found guilty. Some had appealed against their sentences; other said they had not because they lacked the means to do so. Human Rights Watch was later informed that lawyers had filed appeals on their behalf but that the defendants themselves were not aware of this. All of them were uncertain about their fate, about the procedure in their cases, and about how long they would be expected to remain in prison. Several of those in Kebbi State, in particular, said they felt abandoned by the outside world. Some were imprisoned in locations very far from their family. For example Bello Mohammed Katsina and Mohammed Mansir Katsina were both detained in Birnin Kebbi Prison, Kebbi State, after being sentenced to amputation on November 26, 2002, by the Upper Shari’a court in Kamba, Kebbi State. One year later, neither of their families were even aware of their fate. Bello Mohammed told Human Rights Watch: “I’m just sitting here now. I have no sentence to serve, no date. My life is just passing.” Mohammed Mansir said: “I think they will cut my hand, as there is no means to get out [of prison]. My

family is far away. My days are passing for nothing. We haven't appealed because there is nobody to stand for us."¹⁰⁶

Case example: Yahaya Kakale (Kebbi State)

The case of Yahaya Kakale in Kebbi State illustrates the range of concerns about trials in Shari'a courts, including a disregard for due process; confessions extracted under torture; corruption and abuse of power by judicial officials; harsh sentencing; absence of legal representation in the court of first instance; and breakdown of communication between the defendant and the lawyer during the appeal process.

Yahaya Kakale, a twenty-three-year-old trader from Aliero local government, married, with two children, was arrested by soldiers at a roadblock in July 2001. The soldiers said that they had been told that several items he was carrying (a video, a television and a radio and CD player) were stolen properties.

Four soldiers started flogging me. They slapped me and kicked me with their boots. They took me to Aliero police station. The DPO [divisional police officer] said he wouldn't receive me as I was seriously injured. I had injuries on my ankles and wrists and head, and I was bleeding from my nose. The DPO ordered that one soldier and one policeman take me to hospital. I was given treatment there and was taken back to the police station the same day.

The police locked me in a cell at 2 a.m. The DPO came in the night and called for me. The police handcuffed me on my legs and arms. They put an iron rod and raised me up on the iron, hung me and began to torture me. They hit me with a baton and pressed the handcuff into my wrists. It felt as if my hands would fall off. There were about five policemen, including the DPO. The DPO was standing there. He didn't beat me but he shook the handcuffs on me very hard. He said: you must tell us you are the one who took the properties. I felt my life was in danger so I said I was the one who took them [...]

I spent two days in the police station. The IPO [investigating police officer] wrote my statement. I didn't know what was written but I signed because he told me to.

¹⁰⁶ Human Rights Watch interviews, Kebbi Prison, Birnin Kebbi, December 17, 2003.

One of the sergeants told me that the chairman of Aliero local government had come to see the DPO and told him I used to steal their properties so they should take me to the Shari'a court and get my hand cut off.

The IPO said they would take me to the Shari'a court at Jega and that if the judge asks me, I should explain exactly what I told the IPO in my statement so that the judge would sympathize and release me with just a few strokes.

They took me to the Upper Shari'a court Jega. There was one judge. He asked me if I stole the properties. I said yes. He asked if I was a Muslim. I said yes. He said: the Qur'an says if any Muslim steals, his hand should be cut off. I said I stole because my parents had died and left nothing for me [...] The judge didn't ask me any other questions. He didn't ask me if I wanted a lawyer. After passing the sentence, he said: if you are not satisfied, you can appeal.

Before sentencing me, the judge sent me to prison for four weeks. The first hearing in court lasted only thirty minutes. The second time, about forty minutes. When they brought me back to court, the judge sentenced me. He said: as you have already admitted to the offense, we will sentence you to amputation of the hand.

When the judge sentenced me, I was worried my hand would be cut and there was no one to help me. How will I make my life again? I was not aware that this could be the punishment if I said I was guilty. I had not heard of this as it had not happened to anyone in my area.

After the first trial, I appealed. One of my uncles found a lawyer for me. The lawyer didn't visit me but I met him in court. We went to the Shari'a court of appeal in Birnin Kebbi, in 2002. There were three judges. They told me: you said that the first court did not allow you to speak the facts. Tell us what really happened. I told the judge that the soldiers had arrested me at the roadblock and beaten me and taken me to the police. I told them the police had tortured me and advised me to tell the judge I did it so that they would release me, but I had not known they would sentence me to amputation. I said I didn't know the law, which was why I accepted. My lawyer said I was withdrawing my confession, and that I had only confessed because of the torture. A government lawyer said: is it possible under Shari'a for someone to withdraw their confession? The judge said he would adjourn for further investigation.

After two weeks, we went back to court. The government lawyer told my lawyer that the confession could be withdrawn, but the lawyer should show him where it says so in the Qur'an or the Hadith. My lawyer said they should give him time and he would find the place in the Qur'an or the Hadith. We went back to court two weeks later.

While I was in prison, some inmates found the place in the Qur'an where it says a forced confession can be withdrawn. I gave it to my lawyer but he rejected it. The court started sitting again. The judge said: this is the last chance we're giving your lawyer to bring those verses, but as your lawyer can't bring them, we will sentence you. My lawyer didn't speak. I raised my hand to say I wanted to speak, to say I had the verses with me. The judge didn't allow me to talk. He was not even listening to me or looking at me. He said the court case had ended because the lawyer couldn't produce the verses and the court of appeal accepted the judgment of the first court. The hearing lasted about one hour.

[...] The judge said: we can't cut your hand until the governor signs, so they will take you back to prison. He said: if you are not satisfied, you can appeal to the court in Kaduna.

I haven't appealed because I don't have any more money. My uncle has no money left. I don't have a lawyer anymore. Nothing has happened since then.¹⁰⁷

When Human Rights Watch met Yahaya Kakale, he had been in prison for more than two years and did not know what was likely to happen to him after the court of appeal had confirmed the amputation sentence. However, according to the National Human Rights Commission, a further appeal had been filed on his behalf to the Federal Court of Appeal in Kaduna.¹⁰⁸ This would be the first Shari'a criminal case to reach the level of the Federal Court of Appeal. However, when Human Rights spoke to Yahaya Kakale, he was not aware of this development. By July 2004, no date had yet been set for the hearing by the Federal Court of Appeal.¹⁰⁹

¹⁰⁷ Human Rights Watch interview, Kebbi Prison, Birnin Kebbi, December 16, 2003.

¹⁰⁸ Human Rights Watch interview, Abuja, December 19, 2003. The National Human Rights Commission was set up by the federal government in 1996 to monitor human rights developments and advise the government on human rights policies. It sometimes intervenes on behalf of victims in individual cases.

¹⁰⁹ Human Rights Watch interview, Abuja, July 1, 2004.

Other cases and patterns of abuse

Police torture and forced confessions

One of the most alarming aspects of the amputation cases documented by Human Rights Watch was the systematic torture of defendants by the police. Strikingly similar patterns were reported across different states.¹¹⁰ Defendants described how police repeatedly beat them, sometimes after handcuffing them, chaining them or hanging them up, until they confessed to the crime of which they were accused or denounced accomplices. They then made them sign a statement, the content of which, in many cases, was not known to the defendant.

Police torture and ill-treatment are not directly connected with the Shari'a system in Nigeria. The police routinely torture suspects and detainees in their custody across the country, regardless of the offense of which they are accused or the legal system under which they are to be charged. However, when the statements extracted under torture are then used to sentence the defendants to punishments as harsh as amputation, the consequences are especially severe.

Some of the defendants interviewed by Human Rights Watch complained to the Shari'a court judges that they had been forced to confess by the police; however, the judges did not take this into account. Human Rights Watch is not aware of any judge ordering an investigation into allegations of police torture in any of these cases.

Abubakar Hamid, a thirty-seven-year-old farmer from Kari Yeldu local government, Kebbi State, was arrested on September 23, 2002, by two policemen who accused him of stealing motorbikes. At the police station, he was tortured so severely that he lost consciousness:

The police took me to a room and handcuffed me, hung me and beat me. I fainted. I didn't know where I was. There were six policemen. They used wood and canes and beat me on my joints, on my knees and arms [...] They said I should confess to stealing the machines [motorbikes]. They kept asking where I had taken the properties. They beat me for more than one hour. In the end, because of the beating, I accepted that I

¹¹⁰ The cases documented by Human Rights Watch were primarily in Zamfara, Kebbi and Kano states. Other organizations documented similar cases in Sokoto and Katsina states.

had stolen the machines. They stopped beating me after I accepted. [...] They took my statement after beating me. I signed it but I didn't want to.¹¹¹

Abubakar Hamid was taken before the Upper Shari'a Court II, Birnin Kebbi, Kebbi State. He told the judge that he had been forced to confess by the police, but the judge did not react:

I told the judge I was forced to accept because I was beaten by the police, that I was not with my senses, that is why I accepted. My hands were peeling because of the torture and the judge could see it. The judge said he would sentence me. He didn't say anything even though I showed him my hands. There were no witnesses. The judge said they should amputate my hand. He didn't ask if I wanted a lawyer.¹¹²

Altine Mohammed, aged thirty-five, was arrested on July 26, 2001, in Birnin Kebbi, Kebbi State, accused of trespass and theft. He was tortured in the police station in Birnin Kebbi:

They hung me up. They beat me with cane and cable wire on the back. The scars are still there. More than five policemen beat me. They were telling me to confess. I saw they wanted to kill me, so I accepted [...] After I admitted, they stopped beating me. I signed the statement after they dropped me down.

They took me to the Upper Shari'a Court, in Birnin Kebbi. I denied committing the crime. The judge asked: didn't you make this statement? If so, why? I said I had confessed because I saw the police wanted to kill me. The judge said he was not concerned with the beatings. He said he found me guilty because I signed the statement. He said the police would not tell lies. He sentenced me to amputation of the right hand.¹¹³

Abubakar Lawali, a cattle herder aged twenty-eight, and Lawali Na Umma, a furniture-maker aged thirty-five, both from Zurmi local government, Zamfara State, were arrested on March 12 and 13, 2003, respectively, after they were accused of breaking into a shop and stealing provisions and money. They were taken to the police station at

¹¹¹ Human Rights Watch interview, Kebbi Prison, Birnin Kebbi, December 17, 2003.

¹¹² Ibid.

¹¹³ Human Rights Watch interview, Kebbi Prison, Birnin Kebbi, December 17, 2003.

Modomawa, beaten and forced to sign statements. Abubakar Lawali described what happened:

The police beat me. They told me I should answer for that crime, otherwise they would accuse me of another crime. They used a baton and pieces of wood to beat me. I didn't accept I had committed the crime. They took my statement. They asked me to sign but I can't recollect if I signed it or not because of the beatings. They beat me all over, in the morning, afternoon, and evening. I spent six days in the police station. They beat me everyday because I would not tell them I did it.¹¹⁴

Lawali Na Umma was also beaten:

The police said we were accused of theft. I didn't admit it. They said to me if you don't admit, we will do to you what we did to your friend, and they beat me. Then they said if you don't accept, we will put another accusation on you. Four or five policemen beat me with wooden sticks and belts. They beat me on the head and back. I spent six days in the police station. They beat me only on the first day. After three days, they took my statement and asked me to sign it. I said I can't sign because I don't accept I'm a thief. They said if you don't sign, we will make another accusation against you. Then I thumb-printed it. I didn't know what was in the statement.¹¹⁵

Abubakar Lawali and Lawali Na Umma first appeared before the Shari'a court in Birnin Magaji, then the case was transferred to the Upper Shari'a Court in Kaura Namoda. In both courts, the two men pleaded not guilty. No witnesses testified and the items they were accused of stealing were not produced in court. After a trial which lasted around one hour and thirty minutes, the judge at the Upper Shari'a Court at Kaura Namoda sentenced them both to amputation, on May 15, 2003.¹¹⁶

Sirajo Mohammed, a thirty-year-old farmer from the village of Dogon Kade, in Kasuwar Daji, Zamfara State, was also sentenced to amputation on the basis of a confession extracted under torture. He was arrested in July 2002, accused of stealing a sheep, and was forced to sign a statement at Tudun Wada police station:

¹¹⁴ Human Rights Watch interviews, Zamfara Prison, Gusau, December 15, 2003.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

I didn't admit to the police that I took the sheep. They beat me. I didn't agree to confess. They wrote the statement and I signed it with my thumbprint. I didn't know what I was signing. In the end I admitted to the police. They beat the inside of my arms with cable wire. After signing the statement, they still beat me.¹¹⁷

He pleaded guilty before the Upper Shari'a Court I, Samaru Gusau. The owner of the sheep was present in court and reportedly said that all he wanted was to have his sheep back. The judge sentenced Sirajo Mohammed to amputation on April 3, 2003. Sirajo Mohammed has since appealed the sentence with the help of his father and a lawyer.

Abubakar Mohammed, a twenty-seven-year-old carpenter, was accused of stealing a television and video in Birnin Kebbi, Kebbi State, in September 2001. He admitted stealing the television but denied stealing the video. The police told him that because he had stolen the television, he must also have stolen the video. They beat him with batons and iron bars for about an hour and a half to make him confess.

The owner of the television came to the police station. He told the police to stop beating me and to just give him his television back and leave me alone. He said only the television was stolen from him, not the video. The police said they would not release me until they had taken me to the Shari'a court. The IPO [investigating police officer] said I should sign the statement. I said no because I hadn't taken the video. They forced me to sign it. They hit my hands with an iron baton, so I had to sign it. The IPO himself hit my hands.¹¹⁸

The next day, on September 6, 2001, he was taken to Upper Shari'a Court I, Birnin Kebbi. He told the judge that he had been forced into admitting that he had stolen both the television and the video, but that he had only stolen the television. The judge simply told him that because he had stolen the television, he must also have stolen the video. There were no witnesses in court, and the owner of the television was not present either. The same day, the judge sentenced him to amputation of the right hand, after a trial which lasted about fifteen minutes.

Abubakar Abdullahi, a forty-two-year-old driver from Kaura Namoda, Zamfara State, and his friend, Mustapha Ibrahim, were beaten by policemen, including the Divisional Police Officer (DPO) himself, in Birnin Magaji police station in October 2000. They

¹¹⁷ Human Rights Watch interview, Zamfara Prison, December 15, 2003.

¹¹⁸ Human Rights Watch interview, Kebbi Prison, Birnin Kebbi, December 17, 2003.

had been accused of breaking into a house and stealing nine bundles of cloth and a blouse.

They beat me in the DPO's office. Four policemen beat me including the DPO. They beat me with wood and iron. I have scars on my arms and legs. They said: "you must accept the crime." I said no. They took my statement and I signed it. I didn't know what I was signing. I spent four days in the police station. They beat me everyday. [...] The DPO put a gun to my leg and threatened to shoot. He said: "if you don't confess, we won't take you to court." After that, I confessed. [...] My friend [Mustapha Ibrahim] was also beaten very badly and he confessed. They broke his wrist.¹¹⁹

Abubakar Abdullahi was sentenced to amputation by the Upper Shari'a court Kaura Namoda, Zamfara State, on February 14, 2002. He has appealed his sentence.

Danladi Dahiru, an Islamic student in his twenties from Dambatta, Kano State, was arrested by the police with two sewing-machines which he confessed to stealing. Two other men who had been involved in the theft ran away. Danladi Dahiru was detained for three weeks in Dambatta police station:

Every day they hung me and beat me. They asked me: where are the other two? They beat me with cable wires and batons. They put handcuffs on my hands and feet and hung me by a chain on the ceiling. They put me on a flat bench, tied me with rope, then hung me and pulled me away from the bench. They did this every morning, at about 7 a.m., for about ten to fifteen minutes. The beating started when the DPO ordered it. Sometimes two or three or more policemen beat me. I used to hear other people crying, also being beaten. The beating was so bad I told them where they could find the other two. They arrested them too. After that, they stopped beating me. I was vomiting blood and I was bleeding from my ears.

The other two were brought there. They were not beaten and were released after two days. I don't know what they discussed.¹²⁰

Mohammed Bala, a twenty-three-year-old laborer from Dala local government, Kano State, had a similar experience after he and a former neighbor, twenty-eight-year-old

¹¹⁹ Human Rights Watch interview, Zamfara Prison, December 15, 2003.

¹²⁰ Human Rights Watch interview, Kano Central Prison, December 12, 2003.

Abubakar Mohammed, were accused of theft. He was arrested in October 2001 by members of a vigilante group and taken to Dala divisional police station:

Three policemen beat me with pump pipes and batons. They asked me: who else committed this offense? I denied, but they insisted. They said: there's one of your friends you move around with. Eventually I told them where my friend could be located and told them his name [Abubakar Mohammed]. I was detained in the police station for ten days. They beat me from 6 p.m. every day. The beating stopped after I gave them the name of my friend. At first, I refused to tell them but the beating continued, so I had to tell them after four days.¹²¹

Abubakar Mohammed was then arrested too, on October 8, 2001. He was taken to the same police station but put in a different cell from Mohammed Bala.

I was beaten on the first day. I have scars on my head and I had to have stitches. They beat me with a piece of iron and a motor piston. They said: you are vagabonds and armed robbers and even if you are killed, nothing will happen. The investigating police officer and three others were all beating me.¹²²

Mohammed Bala and Abubakar Mohammed both gave statements to the police. Mohammed Bala was beaten until he confessed to the crime:

I gave a statement to the police. I said I didn't commit the crime. Then the beating started. After the beating persisted, I accepted I had committed the crime. It was almost a week before I accepted. I had to sign a paper. I was not informed of the content. They told me they would use the paper in court.¹²³

Abubakar Mohammed was also unaware of the content of the statement he was made to sign:

I gave a statement to the police the day after the arrest. The police told me: either you admit or you don't. They said we have a clue that you collectively committed it. I denied it. They wrote, but didn't question me. Then they asked me to sign. I signed, but it was written in English so I didn't understand it. They just showed me the bottom

¹²¹ Human Rights Watch interviews, Goron Dutse Prison, Kano State, December 14, 2003.

¹²² *Ibid.*

¹²³ *Ibid.*

of the paper and told me to sign and it would be used in court. I didn't know the contents of what I was signing.¹²⁴

Mohammed Bala and Abubakar Mohammed were both found guilty and sentenced to amputation of the hand by Gwale Shari'a Court on January 24, 2002.

Abubakar Yusuf, a twenty-seven-year-old photographer from Tsafe local government, Zamfara State, was arrested in December 2002 after taking a video camera, a photo camera and a generator from a friend who owed him money. He spent twenty-four days at Kwatar Kwashi police station, where he was tortured:

They hung me up and beat me on my hands and feet. They tied my hands to my feet and put a stick under my knees. They put handcuffs on my hands and hung me between two shelves. They put tear-gas in my face. I was hanging from about 11 a.m. to 1 p.m. While I was hanging they beat me with wood and a heavy cable. They beat me all over.

I spent twenty-four days in the police station. The whole time I slept with my hands tied behind my back with rope. I was tied all the time. I was only untied to eat.¹²⁵

Abubakar Yusuf was first taken to the Upper Shari'a court in Kwatar Kwashi. In his statement to the police, he had admitted committing the crime, but he told the judge he had only confessed because of the torture. When he returned to the court after a three week adjournment, a policeman told him that he would be sentenced to amputation. In a state of panic, he tried to escape from the court. The police caught him and beat him so severely that when they took him to the prison, the prison authorities refused to admit him, and he was taken to hospital. His case was later transferred to the Upper Shari'a Court I in Samaru Gusau, where he was sentenced to amputation on April 9, 2003. He did not have legal representation. He has since appealed the sentence, with the help of a lawyer found by his family. When Human Rights Watch met him in December 2003, he was still waiting for the outcome of the appeal; the last hearing had been on March 5, 2003. He told Human Rights Watch: "I don't support Shari'a because it is not justice. Sometimes when I think about my case, I want to kill myself."¹²⁶

¹²⁴ Ibid.

¹²⁵ Human Rights Watch interview, Zamfara Prison, December 15, 2003.

¹²⁶ Ibid.

Absence of legal representation and abuse of power by police and prosecution officials

None of the twenty-six prisoners interviewed by Human Rights Watch had legal representation during their trial in the lower or upper Shari'a court. They all stated that the judge did not inform them of this right or give them the opportunity to find a lawyer. Most of the defendants were not even aware that they had the right to legal representation, until after the sentence had been pronounced. The fact that many people, especially those from a poor background and with little education, are ill-informed about their rights and about the law has been exploited with devastating consequences by police and justice officials.

The few defendants who did know they had the right to legal representation said they lacked the means to hire a lawyer, and relatives or friends who might have assisted them in finding one could not be contacted in time. For example Hamza Abdullahi, a shoemaker aged twenty-four, convicted with Allasan Ibrahim, a mechanic aged twenty-two, by the Upper Shari'a Court in Dambatta, Kano State, and sentenced to amputation on June 18, 2003, said: "The judge didn't ask us to get a lawyer. We were aware of our right to have one, but we were handicapped and our parents were not aware [of our trial]."¹²⁷ After they were both sentenced to amputation, Hamza Abdullahi's father arranged for a lawyer to assist them with their appeal: "On 5 November 2003 we went to the higher court to appeal. We saw the lawyer there. He hadn't visited us in prison. The lawyer did the talking. We were not aware of the appeal [...] We never talked to the lawyer privately. The first time we saw him was in court. We haven't seen him since. Now we are just waiting."¹²⁸ The hearing of the court of appeal was adjourned to December 2003.¹²⁹

The absence of legal representation has meant that defendants are more vulnerable to pressures from judicial officials and others who may be advising them against their best interests. Police officials, prosecutors and judges have all knowingly provided misleading advice to defendants facing possible amputation sentences. For example, in the above case from Kano State, the judge in the Upper Shari'a Court in Dambatta told Hamza Abdullahi and Allasan Ibrahim that if they told him the truth, he would free them.¹³⁰ The two defendants pleaded guilty, but the judge sentenced to them to amputation.

¹²⁷ Human Rights Watch interviews, Kano Central Prison, December 12, 2003.

¹²⁸ Ibid.

¹²⁹ No further information was available at the time of writing.

¹³⁰ Ibid.

Haruna Bayero, a twenty-five-year-old trader from Gombe State, was accused of stealing provisions from a shop in Kano. He denied stealing the provisions, but was persuaded to confess first by the police, then by the prosecutor at the Shari'a court:

They first locked me in a cell in the police station [at Naibawa outpost]. The police instructed the two people [who had accused me] to give the provisions to the police as evidence. They brought the items. I said I didn't know anything. I denied I was the person who stole the items. They took my statement for 30 minutes. They asked if someone could bail me. I said no, I am not from here. The police said they would assist me if I said in my statement that I stole the items. They said that if I confessed, the judge would convict me with an option of a fine. Otherwise I would be in prison for a long time without trial. I thought of my family. My wife was pregnant. I thought I would be released, so I agreed. The police wrote in the statement that I confessed. I didn't know about court procedures or sentences. I was not aware of the possible sentence. I just looked at the possibility of a fine and release.¹³¹

Haruna Bayero was taken to the Shari'a court in Kumbutso. There,

The prosecutor came and asked me what happened. I told him the whole story, including how the police had advised me to confess. The prosecutor said yes, if you confess, it will hasten the judgment. If you deny, it will take a long time and it could be worse. He said anyway, your statement to the police will be used in court so there is no point denying it.¹³²

Haruna Bayero pleaded guilty, but told the judge that it was the police who advised him to confess. "The judge didn't tell me I could have a lawyer. I didn't know about these things. I was ignorant of the whole thing. The hearing lasted less than thirty minutes."

After an adjournment of four weeks, he was taken back to the same court.

The prosecutor met me in the cell first. He told me again: don't forget what we told you, just confess [...] The same judge asked me again if I stole. I just confessed. I didn't explain the whole story again. The judge didn't ask if I wanted a lawyer. There were no witnesses, only the complainant.¹³³

¹³¹ Human Rights Watch interview, Kano Central Prison, December 12, 2003.

¹³² Ibid.

¹³³ Ibid.

The prosecutor who had advised him to confess also took 5,000 naira from a friend of Haruna Bayero, after promising to arrange for Haruna Bayero to be released on bail. Haruna Bayero told the judge that money for his bail had been given to the prosecutor; the judge reportedly said he would find out what happened. However, Haruna Bayero was not granted bail, and the prosecutor did not return his friend's money. On April 4, 2002, Haruna Bayero was found guilty by Kumbutso Shari'a Court, Kano State, and sentenced to have his hand amputated. He appealed his sentence to the Upper Shari'a Court of Kofar Kudu, with the help of a lawyer provided by his family. At the court of appeal, he told the judge that he had not committed the offense and explained that the police had told him to confess. The case was adjourned. When Human Rights Watch met Haruna Bayero in December 2003, he said he had been waiting for around three months and had not received any more news about his case.¹³⁴ His lawyer said that his appeal was due to be heard on December 23, 2003, and confirmed that Haruna Bayero would withdraw his confession.¹³⁵ On April 16, 2004, the Upper Shari'a Court accepted the appeal and quashed the amputation sentence on the grounds that the court had not explained the effect of the confession to Haruna Bayero.¹³⁶ The court ordered a retrial. Haruna Bayero was to be re-tried by the Kumbutso Shari'a Court, which had sentenced him the first time, but by a different judge. The court agreed that he could be granted bail, but by September 2004, Haruna Bayero had not yet found anyone to stand bail for him, so was still detained in Kano Central Prison, awaiting the new trial.¹³⁷

Danladi Dahiru, whose case is described above, also took the advice of the police: "The police asked me if there was anyone to bail me. I said no and I don't have any money. The police said: if no one can help you, if you go to court and confess, the judge will allow you to go."¹³⁸ He was brought before the Upper Shari'a court in Dambatta and pleaded guilty. On the advice of the police, he also said he had committed the offense alone, even though two other people had been involved (see above). The judge sentenced him to amputation of the right hand. "The whole process lasted ten minutes. I didn't have a lawyer. The judge didn't tell me I could have a lawyer. After sentencing me, he said I could appeal. I didn't know amputation sentences existed. I just hoped I could go home because that was what the police had said."¹³⁹

¹³⁴ Ibid.

¹³⁵ Human Rights Watch interview, Kano, December 13, 2003.

¹³⁶ Section 389 (1) of the Kano State Criminal Procedure Code Cap.37 (Amendment) Law 2000 specifies that the court must be "satisfied that the accused has clearly understood the meaning of the accusation against him and the effect of his confession."

¹³⁷ Human Rights Watch correspondence, April 26 and September 9, 2004.

¹³⁸ Human Rights Watch interview, Kano Central Prison, December 12, 2003.

¹³⁹ Ibid.

Mohammed Bala and Abubakar Mohammed, whose case is described above and who were both tortured by the police, were also advised by the prosecutor to confess: “The prosecutor told us he would help us, and that if we didn’t argue with the court, he would plead with the judge to give us a short jail term. We agreed [...] The prosecutor told us: as soon as you appear before the judge, just admit you’re guilty.”¹⁴⁰

They both pleaded guilty. The judge didn’t ask them if they wanted a lawyer, and they didn’t know they were allowed to have one. Abubakar Mohammed told Human Rights Watch: “We didn’t know the implications. We admitted because the prosecutor had reassured us. We’d never heard of amputations here [in Kano], only in Zamfara, and other Islamic countries.” Mohammed Bala said: “I didn’t know either that this existed. When I heard it, I felt as if I should die.”¹⁴¹

Mohammed Bala’s father appealed on his behalf, but according to Mohammed Bala, he did not have legal representation at the appeal stage either. The Shari’a court of appeal at Kofar Kudu heard the appeal for Mohammed Bala, but not for Abubakar Mohammed. Mohammed Bala told the judges that he had only confessed to the offense because the police had tortured him and the prosecutor had advised him that if he didn’t argue with the court, he would get a lighter sentence. The court of appeal’s decision was adjourned about nine times, because the prosecutor was absent. Eventually, in December 2002, the judge at the court of appeal ordered for the case to be retried.¹⁴² Mohammed Bala was returned to prison. The case was sent back to the first Shari’a court, where a different judge handled the case. Mohammed Bala was eventually released on bail in October 2003. He was subsequently re-arrested on another charge, after a woman accused him of stealing a video nine days after his release. He claimed that the woman had accused him arbitrarily “because I was in the area, and I was a thief, therefore I must have done it.” This time, he was tried not by a Shari’a court but by a magistrates’ court, which sentenced him to one year and six months’ imprisonment, or a 5,000 naira fine.¹⁴³

For reasons which are not clear, Abubakar Mohammed did not benefit from the outcome of Mohammed Bala’s appeal, even though he was a defendant in the same case;

¹⁴⁰ Human Rights Watch interviews, Goron Dutse Prison, Kano State, December 14, 2003.

¹⁴¹ Ibid.

¹⁴² Mohammed Bala told Human Rights Watch that the judge at the court of appeal had sent the case for re-trial because the first judge had used the wrong section of the law, but he did not know which section he was referring to. Human Rights Watch was unable to obtain confirmation from the judges.

¹⁴³ Human Rights Watch interview, Goron Dutse Prison, Kano State, December 14, 2003.

nor was he retried alongside Mohammed Bala by the first Shari'a court. According to Mohammed Bala, the prosecutor in the first Shari'a court asked where Abubakar Mohammed was and why he had not appeared, but according to his account, the trial only dealt with his own case. Abubakar Mohammed remained in prison in December 2003. He told Human Rights Watch that he had no one to help him as his father had died, and his mother was very old.

The case of Abubakar Abdullahi, in Kaura Namoda, Zamfara State, also illustrates the abuse of power and corruption by police and prosecution officials. He and his friend Mustapha Ibrahim were both tortured by the police into confessing to theft (see above). As in all the other cases, neither of them had legal representation. When they were first brought before the Shari'a court, they pleaded not guilty. The hearing was adjourned.

After fifty days [...] the prosecutor told me to say that Mustapha Ibrahim had not committed the crime, that if I said this, I would get a shorter prison sentence or just a fine of 1,000 or 1,500 naira. Otherwise I would be sent to prison and he didn't know when I would be released. I agreed. They took us to court. Mustapha said he was guilty and that I was too, because the police had said we would get shorter sentences if we said this. The judge sentenced Mustapha to six months in prison and thirty lashes and sentenced me to have my hand cut. The trial lasted only thirty minutes.¹⁴⁴

Abubakar Abdullahi believed that Mustapha Ibrahim had received a lighter sentence because his family had connections. Abubakar Abdullahi appealed his sentence in January 2002 and pleaded not guilty to the court of appeal. The police officer who had been responsible for investigating the case was called as a witness and certain items were shown as exhibits, but according to Abubakar Abdullahi, these were not the items he had been accused of stealing. In December 2003, he was still waiting for the decision of the court of appeal.

Children sentenced to amputation

Amputation is an extreme form of cruel punishment which is prohibited in several international conventions. The Convention on the Rights of the Child (CRC), ratified by Nigeria in 1991, specifically prohibits such punishments for children.¹⁴⁵ Article 37 (a) of

¹⁴⁴ Human Rights Watch interview, Zamfara Prison, December 15, 2003.

¹⁴⁵ In this report, the word "child" refers to anyone under the age of eighteen. The U.N. Convention on the Rights of the Child states: "For the purposes of the present convention, a child is every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." Convention on the Rights of the Child, Article 1, adopted November 20, 1989 (entered into force September 2, 1990).

the CRC states: “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.” The UN Standard Minimum Rules for the Administration of Juvenile Justice also state that “juveniles shall not be subject to corporal punishment.”

Several boys under the age of eighteen have been sentenced to amputation in northern Nigeria. Once again, the unavailability of accurate records on sentencing, combined with unreliable estimates of these boys’ ages, mean that it has not been possible to confirm the exact number of such sentences. To date, none of these sentences are known to have been carried out, but some of the boys have remained in detention for prolonged periods.

In July 2001, Abubakar Aliyu, reported to be between fourteen and seventeen years old, was accused of stealing money and was sentenced to amputation by an upper Shari’a court in Kebbi State. Two co-defendants believed to be aged sixteen were reportedly sentenced to fifty lashes and eighteen months in jail. Lawyers filed an appeal on behalf of Abubakar Aliyu, and the court of appeal quashed the amputation sentence on the grounds that he was a minor. Instead, they sentenced him to flogging and sent him to a children’s remand home for one year to learn vocational skills. The upper Shari’a court which initially sentenced him had erred in relation to Kebbi State’s own Shari’a legislation. Section 72 of the Kebbi State Penal Code (Amendment) Law 2000 states: “No act is an offence which is done by (a) a child under seven years; or (b) in cases of hudud, by a child below the age of taklif.” *Taklif* is defined in section 50 as “the age of attaining legal and religious responsibilities” but is not defined in terms of a specific age. Section 96 of the same law states: “when an accused person who has completed his seventh but not completed his eighteenth year of age is convicted by a court of any offence, the court may instead of passing the sentence prescribed under this code, subject the accused to: - (a) confinement in a reformatory home for a period not exceeding one year; or (b) twenty strokes of cane, or with fine or with both.”

Several boys under the age of eighteen were sentenced to amputation and detained in Sokoto prison in 2003. As with the other cases described above, their sentences had not been carried out. Lawyers and members of nongovernmental organizations who visited Sokoto Prison in 2002 and 2003 estimated that the majority of around ten prisoners in Sokoto sentenced to amputation were under the age of eighteen. They could not confirm their age but believed that most were aged around fifteen. Two were reportedly acquitted because of their age.¹⁴⁶ Amnesty International researchers who visited Sokoto

¹⁴⁶ Human Rights Watch interview, Abuja, November 15, 2002.

Prison in March 2003 interviewed four prisoners who were under the age of eighteen at the time of their alleged offense, and who were sentenced to amputation. At least two of them had been beaten by the police and forced to sign a statement which they could not understand.¹⁴⁷

At least one boy under eighteen has also been sentenced to amputation in Katsina State. In a case involving the theft of a bull, a boy aged fifteen and an adult aged nineteen were tried by the lower Shari'a court in Maska, Katsina State, in 2002 and sentenced to amputation. A lawyer came across them by chance in Katsina Prison, and filed an appeal on their behalf. Even though the thirty-day appeal period had lapsed, the upper Shari'a court in Funtua agreed to register the appeal.¹⁴⁸

Floggings

Flogging has been the most commonly applied of all the corporal punishments provided for by the Shari'a legislation in Nigeria's northern states. A variety of offenses are punishable by flogging under the Shari'a penal codes; those most frequently punished in practice are consumption of alcohol, theft, and fornication. The number of strokes of the cane usually ranges from forty to one hundred, depending on the offense.

Floggings are carried out in several states, although the rate has gradually decreased in recent months. As with other types of sentences, no overall statistics are available and cases of flogging are so common that they are often not reported at all. In August 2003, a lawyer in Gusau told Human Rights Watch that there were floggings everyday in Zamfara State,¹⁴⁹ while a local journalist in Zamfara State said that floggings sometimes took place twenty times a week.¹⁵⁰ A woman in Birnin Kebbi, capital of Kebbi State, said that when Shari'a was first introduced into Kebbi State, there were floggings on average once a week; she estimated that by the end of 2003, the number had decreased to around one every few months.¹⁵¹ However, the registrar of a Shari'a court in Birnin Kebbi said that floggings were still common and estimated that they took place at least once a month.¹⁵² The chairman of the Liquor Licensing Board in Niger State (a body created by the Niger State government in April 2000) told Human Rights Watch that in

¹⁴⁷ Amnesty International interviews, Sokoto Prison, March 22, 2003.

¹⁴⁸ Human Rights Watch interview, Abuja, August 7, 2003. Human Rights Watch has not been able to confirm the progress or outcome of this case.

¹⁴⁹ Human Rights Watch interview, Gusau, Zamfara State, August 3, 2003.

¹⁵⁰ Human Rights Watch interview, Gusau, Zamfara State, August 1, 2003.

¹⁵¹ Human Rights Watch interview, Birnin Kebbi, Kebbi State, December 17, 2003.

¹⁵² Human Rights Watch interview, Birnin Kebbi, Kebbi State, December 17, 2003.

2000 and early 2001, there used to be an average of ten to fifteen floggings a month in Niger State—sometimes rising to twenty—and that floggings took place in every local government in the state. However, the number had subsequently decreased; by mid-2003, there were one or two a month. He mentioned one flogging in Mokwa local government in June 2003, two in Lapai local government in July 2003, and “many cases” in Rafi local government in 2002.¹⁵³ A lawyer in Kano said that at the end of 2003, floggings were still quite common in Kano State; he estimated that there were an average of about three cases a month, most of them cases of accusations of alcohol consumption.¹⁵⁴

Defendants’ rights have been systematically disregarded in cases of floggings. Typically the suspect is arrested and tried within a matter of days, and, if found guilty, sentenced to a number of lashes (depending on the offense allegedly committed), then flogged immediately, as soon as the trial is over. The flogging is carried out in public, usually outside the court or in a nearby public place, with a crowd watching. The flogging is administered by a court official such as a court messenger or clerk, using a thin leather whip or cane; in some states, such as Kebbi, policemen are sometimes called upon to carry out the flogging. The victim is usually made to lie down on a bench; in some cases, they are made to take their shirt off. According to the official guidance, the person administering the flogging holds his arm close to his side and does not raise his hand high, so that the flogging is not very painful.¹⁵⁵ In the majority of cases, the instant administration of the punishment means that the defendant’s right to appeal, although existing in theory, is systematically ignored.

For example, on July 21, 2003, a civil servant in his forties, Garba Aliyu, was arrested by the hisbah who accused him of drinking alcohol. A lawyer in Gusau described the summary nature of the trial: “He admitted drinking previously, but denied drinking at the specific time of his arrest. On that admission, the judge said: ‘go and flog him eighty times.’ He was flogged. He had no opportunity to appeal and wasn’t told he could appeal. He had no legal representation.”¹⁵⁶

¹⁵³ Human Rights Watch interview, Minna, Niger State, August 7, 2003.

¹⁵⁴ Human Rights Watch interview, Kano, December 13, 2003.

¹⁵⁵ Traditionally, the person carrying out the flogging is supposed to place a copy of the Qur’an under his arm to prevent him from raising his hand too high. In Nigeria, a pillow or a stick is sometimes used instead; alternatively, the person just keeps his arm close to the side of his body and raises his hand vertically when carrying out the flogging. Some of the states’ Shari’a Codes of Criminal Procedure describe in detail the manner in which flogging should be carried out. See for example Section 269 (4) of the Zamfara State Shari’ah Criminal Procedure Code Law 2000.

¹⁵⁶ Human Rights Watch interview, Gusau, Zamfara State, August 4, 2003.

Few of the people interviewed by Human Rights Watch—including eye-witnesses of floggings, court officials, journalists and even some lawyers—appeared to take the issue of flogging seriously. They described the punishment as intended to inflict symbolic humiliation or disgrace, rather than pain, stressing that “they do not hit them hard.” In a typical comment, the attorney general of Zamfara State told Human Rights Watch: “The flogging doesn’t inflict injury, but sets an example to the population about unsocial behavior. It is intended to inflict shame.”¹⁵⁷ A lawyer in Kaduna said: “Floggings are not a punishment as such but are intended to humiliate the offender. They put a stick under their arm. They call people to witness and to humiliate. It is not really to punish.”¹⁵⁸ Some justified or accepted it on the basis that it existed even before Shari’a was extended to cover criminal law in 2000. Even some human rights organizations have not been especially active on the issue of flogging and have not treated it as a priority in their work.

The public aspect of the punishment is central to its perceived “effectiveness,” as illustrated by this account from a woman in Kebbi State: “They flog people in public in the marketplace, outside the courtrooms or elsewhere, but only if there are people to watch [...] State television announce the case and they show it live. Journalists are filming.”¹⁵⁹ The public spectacle of flogging does not appear to elicit much reaction among Nigerians. A man in Dambatta local government, Kano State, described a flogging which took place there on June 2, 2003. The defendant, Mudansiru Abdulmumini, a farmer in his thirties, had been charged with dealing in intoxicants under Section 137 of the Penal Code and tried by the Upper Shari’a Court, Dambatta. “He confessed. He didn’t have a lawyer. The police arrested him with six tins of solution. The court punished him with twenty lashes. [...] The court messenger lashed him outside the court. [...] The victim was shouting: ‘please stop!’. They flogged him on the back and buttocks with his shirt on. There were more than twenty eye-witnesses, men and women, saying: ‘Allahu Akbar!’ [God is great]. Then everyone just goes away.”¹⁶⁰

The fact that the vast majority of victims of flogging do not have legal representation and are often not able to exercise their right to appeal attracts little concern or indignation, with the exception of a few protests from lawyers. It would appear that flogging is seen by some Nigerians as a lesser punishment, and one which has the

¹⁵⁷ Human Rights Watch interview with Mohammed Sani Takori, Commissioner of Justice and Attorney General of Zamfara State, Gusau, August 4, 2003.

¹⁵⁸ Human Rights Watch interview, Kaduna, July 24, 2003.

¹⁵⁹ Human Rights Watch interview, Birnin Kebbi, Kebbi State, December 17, 2003.

¹⁶⁰ Human Rights Watch interview, Dambatta, Kano State, July 31, 2003.

comparative advantage of being administered quickly and without lasting consequences. Several people explained that by exercising the right to appeal against a flogging sentence, the defendant would risk facing a lengthy period in detention while the appeal was being considered, and that many defendants opted not to appeal and to face the flogging simply in order to avoid imprisonment. This position is easy to understand in view of the fact that both under Shari'a and the rest of the justice system in Nigeria, accused persons can be detained for several years awaiting trial or awaiting the outcome of their appeal.¹⁶¹

Many people have been flogged on suspicion of drinking alcohol, which is forbidden in most of northern Nigeria; laws prohibiting the consumption of alcohol were in existence even before the introduction of Shari'a, and have since been tightened by some states, in some cases extending to a complete ban.¹⁶² Although it is widely known that some Muslims drink alcohol, public punishment for this offense is considered very humiliating. A resident of Birnin Kebbi, Kebbi State, told Human Rights Watch about a young man in his twenties, who was flogged in 2003 after he was arrested by hisbah in the street; he was allegedly drunk at the time. They reportedly took him straight to the Shari'a court, not to the police station; there, he was flogged, and released with a warning not to drink beer again. Friends and colleagues said that he was so ashamed that he would not talk about it to anyone.¹⁶³

Some of those flogged have been under the age of eighteen. One of the earliest and most publicized cases was that of Bariya Ibrahim Magazu, a teenage girl who had become pregnant and was accused of pre-marital sex. While it was widely reported by the media that Bariya Magazu was seventeen years old, local sources, including the women's rights organization Baobab for Women's Human Rights, believed that she was no more than thirteen or fourteen. In September 2000, the Shari'a Court in Tsafe found her guilty of *zina* (fornication) and sentenced her to one hundred lashes. She was also accused of bringing false charges against three men who she claimed had raped her, for which she was sentenced to an additional eighty lashes. The three men were arrested, but denied the charge and were released after three days. With the help of lawyers hired by Baobab for Women's Rights, Bariya Magazu appealed the conviction. The lawyers advanced several grounds for appeal, including that the defendant was under eighteen,

¹⁶¹ More than two thirds of the prison population in Nigeria are held awaiting trial. Some have been held in pre-trial detention for many years.

¹⁶² For a comparison of legislation prohibiting alcohol in different states, see "Legal pluralism and the development of the rule of law in Nigeria: issues and challenges in the development and application of the Shari'a," by Dr Muhammed Tawfiq Ladan, Ahmadu Bello University, Zaria, August 2003.

¹⁶³ Human Rights Watch interview, Birnin Kebbi, Kebbi State, December 17, 2003.

and therefore could not have consented to the act;¹⁶⁴ nor, if found guilty, should she be given the same punishment as an adult. Eventually, the sentence of eighty lashes for bringing false charges against the men was dropped, but Bariya Magazu was flogged one hundred times on January 19, 2001, even though her appeal was still pending. She was only given one day's notice that she would be flogged on that date; initially, the flogging was to take place one week later, forty days after the birth of her baby.¹⁶⁵

More recently, on July 31, 2003, a teenage girl, Zuwayra Shinkafi, and her boyfriend, Sani Yahaya, were both flogged in Gusau, Zamfara State, after being found guilty of extra-marital sex. Their arrest, trial, and punishment all took place within two or three days. According to some sources, the girl was aged about sixteen, but other eye-witnesses estimated that she was at most thirteen. The boy was estimated to be about eighteen. A local source reported that members of the local monitoring group (Zamfara State's equivalent of the hisbah) discovered that Zuwayra, who was married and lived in the village of Shinkafi, was having an extra-marital relationship with Sani Yahaya, who lived in the state capital Gusau. They arrested both of them in Gusau and took them to the police. They were tried in Upper Shari'a Court II in Gusau. Zuwayra Shinkafi was given thirty lashes; Sani Yahaya was given eighty lashes and sentenced to ten months' imprisonment.¹⁶⁶ The court registrar said that Zuwayra Shinkafi would normally also have been sentenced to eighty lashes, but because she was "not considered mature," she received a lesser sentence.¹⁶⁷

The sentences in both this case and that of Bariya Magazu go against the Zamfara State Shari'a Penal Code, which states that in cases where defendants are aged between seven and eighteen, "the court may instead of passing the sentence prescribed under this code, subject the accused to: (a) confinement in a reformatory home for a period not exceeding one year; or (b) twenty strokes of the cane, or with fine or with both."¹⁶⁸

Unlike the victims of other forms of punishment under Shari'a—most of whom have been poor, from predominantly rural backgrounds and with little education—the victims

¹⁶⁴ Section 38 (c) of the Zamfara State Penal Code states: "A consent is not such a consent as is intended by any section of this Shari'ah Penal Code, if the consent is given [...] by a person who is under eighteen years of age or has not attained puberty."

¹⁶⁵ For further details of the case, see "Baobab for Women's Human Rights and Shari'a Implementation in Nigeria: the journey so far," 2003; Baobab information bulletin on Bariya Magazu, January 2001; and "Baobab condemns the whipping of Bariya Magazu", press release of January 2001. Also see Human Rights Watch news release "Nigeria: Teenage mother whipped," January 23, 2001.

¹⁶⁶ Human Rights Watch interviews, Gusau, Zamfara State, August 2003.

¹⁶⁷ Human Rights Watch interview, Gusau, Zamfara State, August 4, 2003.

¹⁶⁸ Section 95 of Zamfara State Shari'ah Penal Code Law, 2000.

of floggings have included some high-profile individuals. For example, a Shari'a court judge in Zamfara State was accused of drinking alcohol and publicly flogged in January 2002. He was reportedly arrested by members of the monitoring group on January 21. The following day, on January 22, 2002, he was tried, convicted, and flogged eighty times in the marketplace at Kaura Namoda. Unusually in this case, the flogging was administered by his father-in-law, who was also a judge.

Discrimination against women

Women have been victims of discrimination since Shari'a was extended to criminal law in northern Nigeria, both in terms of certain provisions in the new Shari'a legislation and other practices and regulations enforced outside the framework of the law.¹⁶⁹ While some of these practices existed prior to the introduction of the legislation in 2000, and have been considered a part of daily social life in northern Nigeria for many years, the political climate since 2000 has encouraged discriminatory behavior towards women by providing a new, official framework for it, and human rights violations against women have increased. As stated by a Nigerian academic and activist in Kaduna, "although it is difficult separating the Hausa and Islam patriarchal structure, the reintroduction or politicization of Shari'ah in Northern Nigeria has contributed in reinforcing traditional, religious and cultural prejudices against women."¹⁷⁰

The section below describes different contexts in which women in northern Nigeria have faced discrimination, including provisions in the Shari'a legislation (particularly in *zina* cases), the absence of women in the judiciary, especially among judges and prosecutors, and restrictions and harassment in daily life, affecting, in particular, freedom of movement and association, and mode of dress.

Discrimination against women is institutionalized in parts of the Shari'a criminal legislation in force in northern Nigeria. There are two main provisions in the law which discriminate against women. The first is the inequality in the weight of testimony. According to the Shari'a penal codes, a woman's testimony as evidence in a trial is worth half that of a man, or the testimony of one male witness equals that of two female witnesses. Human Rights Watch is not yet aware of any trial where this issue has arisen, or where the inequality in the weight of testimony has affected the outcome of a trial.

¹⁶⁹ For a more detailed account of how Shari'a has affected women in Nigeria, see "Baobab for Women's Human Rights and Shari'a Implementation in Nigeria: The Journey so far," 2003.

¹⁷⁰ Husseinu Abdu, "Power in the Name of Allah? Muslim Women in Contemporary Nigerian Politics," presented at a national workshop on Gender, Politics and Power, organized by the Centre for Social Science Research and Development, 29-30 July 2003, Lagos.

This may be in part because many trials in Shari'a courts are conducted without witness testimony, and where witnesses have testified, they have most often been men.

The second aspect which discriminates against women is the inequality in standards of evidence in cases of *zina* (extra-marital sex, which is referred to as adultery if the person is married, or fornication, if she is not). Women have been adversely affected in these cases. Under the Shari'a codes in force in Nigeria, based on the Maliki school of thought, pregnancy is considered sufficient evidence to convict a woman of adultery. For the male defendant, on the other hand, the Shari'a penal code requires that the act of adultery must have been witnessed by four independent individuals before the man can be convicted—a standard of proof which is usually impossible to obtain, and has not been obtained in any of the cases which have arisen so far. This glaring discrimination in standards of evidence has had serious consequences for women charged with *zina*. It has resulted in situations such as those of Bariya Magazu, Safiya Husseini and Amina Lawal, where the women were found guilty and sentenced to death, or flogging, on the basis of their pregnancy, whereas the men named in the cases were acquitted for lack of evidence.¹⁷¹ There have also been cases when men have been convicted for adultery, but these convictions have usually been based on the man's own confession.

Even provisions of Shari'a within the Maliki school have been applied selectively. For example, judges have considered a woman's pregnancy as sufficient evidence of *zina*, yet have ignored the provision of the "sleeping embryo," which exists within the same school of thought and is more favorable to female defendants. In the case of both Amina Lawal and Safiya Husseini, the option of accepting that the baby could have been fathered by the woman's husband was disregarded by the judges who initially sentenced the women. In the case of Amina Lawal, however, the Katsina State Shari'a Court of Appeal accepted the argument of the "sleeping embryo" as one of the grounds for concluding that Amina's baby could have been conceived with her husband.

The plight of women before the Shari'a courts, especially in cases of adultery, has been aggravated by the absence of women in the judiciary. There are no female judges in the Shari'a courts, as the Maliki school of thought prohibits women from becoming judges.¹⁷² The vast majority of defense lawyers are also men. One of the few female lawyers to have acted on behalf of women sentenced by Shari'a courts was initially

¹⁷¹ For further details of how the death penalty affects women in Nigeria, see Amnesty International report "The death penalty and women under the Nigerian penal systems," February 2004.

¹⁷² Of the four schools of thought, only the Hanafi school allows female judges, but only in cases dealing with civil and financial matters, not in criminal cases.

prevented from speaking in court by the Shari'a court judge, on the basis that female defense lawyers could only speak through the male counsels on their teams.

Judges have also failed to investigate allegations of rape made by female defendants in adultery cases and have ended up punishing some women who claimed to have been victims of rape. For example, in the case of Bariya Magazu, the teenage girl accused of extra-marital sex who accused three men of raping her, the judge not only failed to order an investigation into her claims but charged her with falsely accusing the three men, who had denied having sexual relations with her. In the Shari'a penal codes, rape is a crime punishable by death, if the offender is married, or by flogging, if the offender is unmarried. However, the inequality in the standards of evidence required for men and for women means that, in practice, it is more likely that a woman who alleges she has been raped will be found guilty of adultery, or possibly false accusation, than the man charged with rape.

In addition to the discrimination they face in criminal cases before Shari'a courts, women have faced other forms of discrimination in their day-to-day life, affecting, among other things, their freedom of movement and freedom of association. Since the advent of Shari'a, some state governments have introduced measures to prevent men and women from being seen together publicly. These measures, most of which are not codified into laws, have been applied most stringently in Zamfara State, where the state government prohibited women and men from traveling together in public transport, such as buses, taxis, and motorbikes commonly used as taxis, known as *kabu-kabu*. Especially in the period immediately after Shari'a was introduced, the hisbah frequently stopped taxis which carried male and female passengers together and made the women disembark. There were cases, during this early period, where *kabu-kabu* drivers were charged and flogged for carrying female passengers.¹⁷³ The government introduced and provided separate vehicles for men and women. On larger buses, men and women were made to sit separately, with men at the front and women at the back. This was one of several requirements codified in a law passed in Zamfara State on May 31, 2001, and violations of this requirement were punishable by "reprimand, exhortation or warning; or fine not exceeding N500:00 or both."¹⁷⁴ However, residents of Zamfara State reported that restrictions on long-distance buses applied only in the state capital Gusau and in some of the villages, and that men and women could sit together when traveling outside a radius of about 10 kilometers of these locations.

¹⁷³ See "Shari'a: three offenders get 126 strikes in Zamfara, Katsina," *The Guardian*, August 11, 2000, and "Shari'a beating for motorcyclists," BBC News online, August 10, 2000.

¹⁷⁴ Section 4 on "commuting by opposite sexes in public transport systems," Certain Consequential Reform (Socio-Economic, Moral, Religious and Cultural) Law 2001.

The restrictions on travel by *kabu-kabu*—the most common and sometimes the only form of transport in many areas—was especially harsh on women, some of whom had to walk long distances because the drivers (who are always male) refused to carry them or simply drove past them. Car drivers who assisted women in this situation by offering them a lift were also sometimes stopped and harassed by the hisbah. In 2001, Christians formed their own taxi drivers' association, partly in protest at these restrictions and partly in a bid to make up for lost earnings. Christian drivers carry a special identity card indicating that they are members of the Association of Christian Motorcycle Operators, and accept female passengers.

Women were also under increasing pressure to dress in a way which conformed to the notion of what was considered appropriate according to Islam. However, in most states, the dress code was not clearly defined, and was interpreted differently by different individuals, even among the religious and political establishment. As with other issues, such as “immoral gatherings,” there was considerable confusion arising from attempts by the hisbah to enforce some kind of dress code in the absence of a legally prescribed code. A hisbah leader in Kaduna told Human Rights Watch that women should be “completely covered except the face,” but was not able to specify exactly what this meant, and admitted that there could be different interpretations.¹⁷⁵ A hisbah leader in Kano said that the hisbah played an “advisory role” in relation to dress, but because there was no law prescribing dress, women wearing different styles of dress could not legally be apprehended.¹⁷⁶ Yet there had been several cases in Kano when hisbah had stopped women in connection with their style of dress.

Most Muslim women in northern Nigeria traditionally covered their heads, even before Shari'a was extended in 2000, so many of them have not experienced a significant difference in this respect. However, some said that their mode of dress was supervised more closely by the hisbah since the extension of Shari'a, and that the issue was now more publicized. In Kaduna State, the hisbah organized lectures for women on how to dress, but did not approach them individually if they judged that they failed to comply. In Kano, the hisbah sometimes stopped women who were not “properly dressed,” took them to their office, gave them a lecture, then gave them a *hijab* (veil). In some areas, public pressure on women to cover themselves completely intensified. For example, Human Rights Watch researchers visiting the Kongo area of Zaria, in Kaduna State, in July 2003 noticed the following graffiti on a wall: “Watch your mode of dress – Shari'a” and “Dress properly, or else. Shari'a.”

¹⁷⁵ Human Rights Watch interview, Kaduna, July 25, 2003.

¹⁷⁶ Human Rights Watch interview, Kano, July 29, 2003.

Most of the attempts to enforce a dress code for women have been undertaken by the hisbah, rather than the state governments. The exception is Zamfara State, where a law was passed in 2001 prohibiting “indecent dressing in public” as well “indecent hair cuts” for both men and women.¹⁷⁷ The same law banned “the association in public of two or more persons of opposite sexes to engage in discussions or acts of immoral or indecent nature and in circumstances not approved by the tradition and culture of the people of the State.”¹⁷⁸ Regarding women, the law specifies: “Every female of Islamic faith shall put on dress to cover her entire body except for her feet, hand and face in the public or while attending the office both within or outside the State.”¹⁷⁹ A woman in Gusau told Human Rights Watch that a circular had been sent to all female staff in government offices in Zamfara State instructing them to wear the hijab; however, women who did not wear it were not harassed.¹⁸⁰

One of the most serious cases where women were directly victimized for not conforming to a particular dress code occurred in Bauchi State. In February 2002, twenty-one Christian nurses were suspended from their jobs at the Federal Medical Centre in Azare for refusing to wear a uniform based on Islamic dress, which the hospital director had introduced to replace the standard nurses’ uniforms; the hospital stopped paying their salaries. Eventually, ten of them agreed to conform to the dress code simply in order to be able to resume work. However, the remaining eleven did not, and were fired on April 24, 2002.¹⁸¹ The decision to enforce the dress code appears to have been a personal initiative by the hospital director—a surprising move, since the medical centre is a federal and not a state institution. Following representations by nurses’ associations, Christian associations and nongovernmental organizations, the federal government eventually ordered the hospital director to reinstate the nurses. The hospital director refused and was dismissed. However, by July 2003, the eleven nurses had still not been reinstated, nor had they received compensation.¹⁸² A court case initiated by the nurses in June 2002 was eventually dismissed by the Federal High Court in Jos on March 24, 2004 on the basis that it lacked merit, and on a number of technical

¹⁷⁷ Certain Consequential Reform (Socio-Economic, Moral, Religious and Cultural) Law 2001.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

¹⁸⁰ Human Rights Watch interview, Gusau, August 1, 2003.

¹⁸¹ See letter entitled “Termination of appointment,” from D.O.Oziehisa, Head of Administration, Federal Medical Centre, Azare, April 24, 2003. The nurses who were sacked were Rifkatu J.Gopye, Salome Iliya, M.I.Gotan, Patricia Abe, Joyce Shedule, Anna Walide, Rebecca Phillimon, Sola Atere, Eno Samuel, Magdaline Izuwa, and Ngozi Udegbu.

¹⁸² Human Rights Watch interview, Lagos, December 9, 2003. See also “In Bauchi, nurses battle Shari’ah,” *ThisDay*, July 22, 2002; and “Brief on the Shari’a abuse of the Bauchi eleven,” by the Macedonian Initiative.

grounds.¹⁸³ Finally, in August 2004, it was reported that the government had reinstated the nurses, at least verbally, and deployed them back to their home states.¹⁸⁴

By 2003, measures limiting women's freedom of movement and mode of dress were being enforced less stringently. Harassment of women had become rarer; the hisbah often turned a blind eye to men and women traveling together and rarely stopped women for not wearing "appropriate" dress. However, in December 2003, some Muslim motorbike taxi drivers in Gusau, capital of Zamfara State, were still refusing to carry female passengers; it was not clear whether this was because they feared punitive action by the hisbah, or because they themselves believed they should not be carrying female passengers.

VI. Absence of legal representation

In the majority of the death sentence, amputation, and flogging cases documented by Human Rights Watch, defendants did not have legal representation before or during their trial in the court of first instance (lower or upper Shari'a courts). The judges did not inform the defendants of their right to seek legal advice or ask them if they wished or needed legal assistance. Many of the defendants did not seek legal advice themselves, either because they were not aware of their right to do so, or because they did not have the money to hire a lawyer. The absence of legal representation is generally not viewed as a problem in terms of public perception in northern Nigeria, in large part because people are not informed about their rights, and have been misled into believing that Shari'a does not allow the presence of lawyers in court.

The right to a fair hearing, including the right for a defendant to "defend himself in person or by legal practitioners of his own choice" is guaranteed in section 36 of the Nigerian Constitution, as well as in the Shari'a legislation introduced by northern states since 2000. For example the Zamfara State Shari'a Criminal Procedure Code states: "A legal practitioner shall have the right to practice in the Shari'ah court in accordance with the provisions of the Legal Practitioners Act, 1990."¹⁸⁵

The Nigerian state has an obligation to provide legal assistance to defendants who cannot afford to pay for a lawyer. The Legal Aid Council, a parastatal body, was created

¹⁸³ Ruling of the Federal High Court of Nigeria, Jos Judicial Division, March 24, 2004.

¹⁸⁴ Human Rights Watch e-mail correspondence, August 8, 2004.

¹⁸⁵ Section 194 (1) of Zamfara State Law no.18 Shari'ah Criminal Procedure Code Law 2000.

by the federal government in 1976 with the mandate of providing free legal assistance and advice to Nigerian citizens who could not afford the services of a private lawyer.¹⁸⁶ However, like many other bodies set up by the government, the Legal Aid Council is seriously underfunded and unable to provide services in all but a small number of cases. In theory, the Legal Aid Council has an office in thirty-four of Nigeria's thirty-six states, but in practice, the capacity of these offices is extremely limited, and in 2003, there was only one Legal Aid Council lawyer in each state.¹⁸⁷ By the end of 2003, the Legal Aid Council had not yet provided lawyers to any of the defendants tried by Shari'a courts and sentenced to death or amputation.

There is a belief voiced by some of the more conservative advocates of Shari'a that Shari'a does not allow legal representation for defendants and that Shari'a courts do not recognize defense lawyers. For example, the Secretary General of the Supreme Council for Shari'a in Nigeria—himself a lawyer by training—told Human Rights Watch: “The right to legal representation is unacceptable to me. Lawyers will just subvert the Islamic principles of justice. They are not informed by the fear of God.”¹⁸⁸ This attitude has filtered down to the population; a lawyer in Kano told Human Rights Watch that most Muslims believed they could not appeal a Shari'a judgment.¹⁸⁹ However, none of the Shari'a laws introduced in Nigeria prohibits legal representation for defendants and some of them, as indicated above, explicitly provide for it.

A lawyer in Zamfara State told Human Rights Watch that there had been occasions when Shari'a court judges had tried to prevent lawyers from appearing in court and told them that their presence was foreign to Shari'a. He described scenes where other people in the courtroom had shouted the lawyer down, and one occasion when he himself had been forced to leave.¹⁹⁰ In one case, on January 30, 2003, the Upper Shari'a court in Kaura Namoda, Zamfara State, denied four defendants the right to legal representation. The four men, Labaran Magayaki, Kwari, Shaibu, and Kabiru, who were accused of criminal trespass, asked the judge for more time to bring their defense counsel to court. The judge refused, proceeded with the trial, and convicted them; they were fined and ordered to pay compensation to the complainant, who was the chairman of the ANPP (the ruling party in Zamfara State) in Kaura Namoda local government. A lawyer assisted them in appealing to the Shari'a court of appeal; one of the main grounds for

¹⁸⁶ The Legal Aid Council was established following the promulgation of the Legal Aid Decree no.56 of 1976, which was subsequently amended in 1990 (Legal Aid Act Cap 205, 1990) and in 1994.

¹⁸⁷ Human Rights Watch interview with T.A.Okunowo, Director of Planning, Research and Statistics, Legal Aid Council, Abuja, December 8, 2003.

¹⁸⁸ Human Rights Watch interview, Kaduna, July 25, 2003.

¹⁸⁹ Human Rights Watch interview, Kano, July 28, 2003.

¹⁹⁰ Human Rights Watch interview, Gusau, August 3, 2003.

appeal was the denial of the right to legal representation and lack of time to prepare their defense. In July 2003, the case was still pending at the court of appeal.¹⁹¹

In the majority of death sentence and amputation cases documented by Human Rights Watch, lawyers have only been able to intervene at the appeal stage. Even then, their efforts have concentrated mostly on the high profile cases, such as those of Safiya Husseini and Amina Lawal. Defendants in less publicized cases have struggled to find lawyers to represent them and have been largely dependent on their families to find lawyers for them. In some cases, human rights and women's organizations have intervened to assign lawyers to specific cases,¹⁹² but the choice of cases has been haphazard, as not all cases are systematically brought to the attention of such organizations, and many are not even reported in the media. Additionally, the resources at the disposal of defendants, their families and nongovernmental organizations have been limited. Even when lawyers have been assigned to assist with appeals, these lawyers have not always played an active role, nor have they always kept their client informed of the progress of the case. Many private lawyers have not been able to continue working on the cases without some form of payment, and correspondingly their interest and involvement in specific cases may have decreased, sometimes to the point of neglect. One of the main consequences of this situation is that in some cases, communication between lawyers and the clients they were supposed to be defending or advising has been poor, and the quality of advice erratic. Several prisoners sentenced to amputation in Zamfara and Kebbi States who were interviewed by Human Rights Watch were not even aware that a lawyer had been assigned to their case or that appeals had been filed on their behalf.¹⁹³

Some lawyers have expressed a reluctance or an unwillingness to take on Shari'a cases. This reluctance has been motivated in part by the public outrage generated by the crime of which the defendant was accused—for example in cases of sexual abuse of children, or murder—and in part by a broader fear that their role in assisting a defendant in a Shari'a case could be perceived as a criticism or challenge of Shari'a, and by extension of Islam as a whole.¹⁹⁴ In a typical example, a man who had assisted the defense counsel in the case of Amina Lawal said that when he came out of the courtroom, he was

¹⁹¹ Ibid. Human Rights Watch has not had access to information about the progress or outcome of the appeal.

¹⁹² Baobab for Women's Human Rights, Women's Rights Advancement and Protection Alternative (WRAPA), and Legal Assistance and Defence Project (LEDAP) have been among the most active nongovernmental organizations providing legal assistance in these types of cases.

¹⁹³ Human Rights Watch interviews with prisoners in Zamfara Prison (Gusau) and Kebbi Medium Security Prison (Birnin Kebbi), December 2003.

¹⁹⁴ Human Rights Watch interviews with lawyers, nongovernmental organizations and others in various locations in Nigeria, 2003 and 2004.

surrounded by youths who accused him of not wanting Shari'a to be applied, because they had seen him assisting Amina Lawal's defense team.¹⁹⁵

The lack of legal representation for defendants tried in Shari'a courts, especially in death penalty and amputation cases, has been one of the main issues of concern which Human Rights Watch has raised in discussions with Nigerian federal and state government officials, including the federal Attorney General and Minister of Justice, and the state attorney generals and other officials of several northern states. All these officials agreed that defendants have the right to legal representation and that Shari'a does not forbid it. The Kano State Director of Public Prosecutions and the Kano State deputy governor confirmed that the accused were allowed to be represented by a lawyer in the Shari'a courts and told Human Rights Watch that in those cases where the accused could not afford it, the Legal Aid Council provided a lawyer;¹⁹⁶ however, this is not known to have happened in any case so far. The Zamfara State Governor also agreed that Shari'a allows defense lawyers and said he believed lawyers should be compulsory in every *hadd* case,¹⁹⁷ but once again, this statement is at complete odds with the practice.

In discussions with Human Rights Watch, several state government officials said they would ensure that judges always informed defendants of their right to have a defense lawyer. The Kebbi State Attorney General claimed that in their training, Shari'a court judges were taught to tell the accused that they could employ legal counsel and trial proceedings should be adjourned if necessary to allow the defendant to consult a lawyer. He also said that judges should not accept confessions made under torture or duress and should always ensure that the defendant has made the statement voluntarily. He told Human Rights Watch that the Kebbi state ministry of justice wanted to establish its own human rights department, which would provide lawyers for defendants with state government funds.¹⁹⁸

VII. Training of judges

The Shari'a legislation was introduced in 2000 with very little preparation. Not only was the legislation itself drafted in a hurried fashion, but the judicial personnel charged with

¹⁹⁵ Human Rights Watch interview, Kano, July 28, 2003.

¹⁹⁶ Human Rights Watch interviews with Yusuf Ubale, Director of Public Prosecutions, Kano, July 30, 2003, and with Magaji Abdullahi, deputy governor, Kano, July 31, 2003.

¹⁹⁷ Human Rights Watch interview with Zamfara State Governor Ahmed Sani, Gusau, August 4, 2003.

¹⁹⁸ Human Rights Watch interview with Ibrahim Maiafu, Kebbi State Attorney General, Birnin Kebbi, December 18, 2003.

its implementation had received very little training. Most judges were transferred straight from the area courts, which dealt only with personal status law cases, into Shari'a courts where they were expected to deal with criminal cases. Many of them did not have any prior legal professional training, even when they were working in the area courts, and they were not trained in the new Shari'a legislation before being appointed. Yet they were given power of life and death over the accused who were brought before them. The consequences of this lack of training among Shari'a court judges have been illustrated in several cases described in this report, such as those of Fatima Usman and Ahmadu Ibrahim, Amina Lawal, and others sentenced to death in trials characterized by numerous substantive and procedural flaws.

After the introduction of Shari'a, a number of training programs were set in place for Shari'a court judges, organized by a combination of state governments, universities, and nongovernmental organizations. Some of the training programs lasted just two or three weeks, others up to six months. Initially, it was not compulsory for judges to attend this training before beginning to try cases in Shari'a courts, and many did not attend the courses until several months or years later. Human Rights Watch was told that a significant number of the judges failed the tests which were part of the training, but continued being judges.¹⁹⁹

Nongovernmental organizations and academic institutions, in particular the Ahmadu Bello University in Zaria, have made efforts to include a human rights component in the training program for Shari'a court judges. According to the deputy dean of the faculty of law at Ahmadu Bello University, Zaria, a training program being developed for judges was to include a session on human rights duties within Shari'a, as well as a comparison with the Nigerian constitution and international human rights instruments such as the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights. It was also to include an emphasis on women and children's rights.²⁰⁰

The nongovernmental organization Legal Defence and Assistance Project (LEDAP), which is based in Lagos but has representation in the north, became involved in a pilot training project for judges. By mid-2004, they had trained between 400 and 500 upper and lower Shari'a court judges in Kano, Katsina, Bauchi and Jigawa states, and about 10 percent of prosecutors from these states. Each course lasted two days. The training included sessions on international human rights law, due process, fair hearings, the rights

¹⁹⁹ Human Rights Watch interview, Abuja, December 19, 2003.

²⁰⁰ Human Rights Watch interview, Zaria, July 26, 2003.

of women, and comparisons with other countries which apply Shari'a, especially those which, like Nigeria, follow the Maliki school of thought.²⁰¹ According to feedback provided to LEDAP by lawyers in the various states, the training had resulted in some improvements in the conduct of judges.²⁰² The training was initially funded by private companies. A request was then made to the Kano State government to fund it, but by July 2004, the state government had not yet provided any funding.²⁰³

Before the program organized by LEDAP, these judges had not had any training at all, beyond their knowledge of the Qur'an and the Hadith. When they were appointed as Shari'a court judges, they were just given a copy of the Shari'a penal code, which existed only in English. Some judges do not read or understand English. In 2003, proposals were underway to translate the penal codes into Hausa, the language spoken by the majority of people in the north.

The Zamfara State Commissioner of Justice and Attorney General of Zamfara State told Human Rights Watch that there was a continuing process of training for judges and other members of the judiciary in Zamfara. He said the training included sessions on procedures and substantive law, as well as the right of the accused to have legal representation. He said the approximately one hundred Shari'a court judges in Zamfara State had all had three months' training, which included exams for former area court judges as well as newly-recruited judges. Several judges were reportedly made to retire because they refused to take the exams.²⁰⁴

VIII. The enforcement of Shari'a and the role of the hisbah

In most northern states, hisbah and Shari'a implementation committees have been given the task of enforcing Shari'a and ensuring that the population observe it in their day to day activities.

The Arabic term *hisbah* means an act which is performed for the common good, or with the intention of seeking a reward from God. The concept of *hisbah* in Islam originates from a set of Qur'anic verses and Hadith. It is an obligation placed on every Muslim to

²⁰¹ For details, see "Integrating human rights in the Shari'a court system in Nigeria – an analysis of papers at the training workshops for Shari'a Court Judges," edited by Ito Eze-Anaba, LEDAP, 2004.

²⁰² Human Rights Watch interview, Lagos, July 3, 2004.

²⁰³ Human Rights Watch interview, Abuja, July 18, 2003, and e-mail correspondence, July 31, 2004.

²⁰⁴ Human Rights Watch interview with Mohammed Sani Takori, Commissioner of Justice and Attorney General of Zamfara State, Gusau, August 4, 2003.

call for what is good or right and to prevent or denounce what is bad or wrong. The Qur'an states: "Let there arise from you a group calling to all that is good, enjoining what is right and forbidding what is wrong. It is these who are successful." (The Qur'an 3:104). The Hadith states: "Whosoever among you sees an act of wrong should change it with his hands. If he is not able to do so, then he should change it with his tongue. If he is not able to do so, then with his heart, and this is the weakest of faith."²⁰⁵

Scholars have generally interpreted these verses and traditions as placing duties upon Muslims at both the institutional level and the personal level. At the institutional level, the concept of hisbah is intended as a mechanism to ensure the welfare of society and to combat harm, including crime. At the personal level, it is intended to instill in each individual the wish to act to prevent something bad from happening, or, if it is not possible to prevent it oneself, to denounce it and call on others to act in order to prevent it.

In the Nigerian context, some observers have compared the role of the hisbah to that of vigilante groups operating in other parts of the country. Vigilante groups are common in many areas of Nigeria, partly based on tradition, partly as a response to the failings of the police. Most of these groups have been set up at the local level to patrol neighborhoods with a view to preventing crime. However, some vigilante groups, such as the Bakassi Boys in the southeast and the Odua People's Congress (OPC) in the southwest, have committed numerous extrajudicial killings and other abuses, and have been diverted to serve political interests.²⁰⁶ The hisbah share some characteristics with these groups but there are also significant differences. Like other vigilante groups, the hisbah are made up mostly of locally-recruited young men who usually patrol their own neighborhoods and sometimes instantly administer punishments on people suspected of carrying out an offense, without, or before, handing them over to the police. Hisbah members have been responsible for flogging and beating suspected criminals, but Human Rights Watch is not aware of reports of killings by hisbah members, in contrast with the Bakassi Boys or the OPC. Hisbah members may carry sticks or whips but unlike some vigilante groups in other parts of Nigeria, they do not usually carry firearms.

²⁰⁵ See Ibn Hazm, *alMahla*, p.1091; al-Sarkhasi, *al-Mabsut*, p.214; Ibn Sharaf al-Nawawi, *Sharh al-Nawawi*, p.28.

²⁰⁶ Human Rights Watch has documented extensively the human rights abuses committed by the Bakassi Boys and the OPC. See Human Rights Watch / CLEEN report "The Bakassi Boys: The Legitimization of Murder and Torture," May 2002, and Human Rights Watch report "The OPC: Fighting violence with violence," February 2003.

Most hisbah members were recruited at the local level, by traditional leaders and local governments, who then submitted the lists of names to their state government. Even though there are some teachers and people versed in Islamic law among the hisbah, the majority are young men with a low level of formal education, no background in law, and no training in law enforcement or procedures for arrest, investigation, or gathering of evidence. Human Rights Watch is not aware of any women joining the hisbah in Nigeria, although neither the Qur'an nor the Hadith prohibit women from doing so, and the call to act for the common good is addressed to all Muslims, whether male or female.

The hisbah operate openly and are easily recognizable: they are provided with uniforms, vehicles, and an office, usually by the local or state government. In some states, the government pays them a small salary. The hisbah have structures at local government and state level. Some are directly supported by their local government (materially and financially), while others, such as the hisbah in Kaduna, claim that membership and participation are voluntary and unpaid. The hisbah operate with the full consent and support of the state government, although the exact nature of their relationship with the state government varies and mechanisms for accountability are not always clearly defined.

State government officials and other individuals interviewed by Human Rights Watch claimed that the activities of the hisbah were governed by regulations and a code of conduct, developed at the state level; however, despite many inquiries in several states, Human Rights Watch was not able to find any legislation governing their activities by mid-2003. Human Rights Watch was told that state governments had only issued “legal notices” to set up the hisbah—a form of subordinate legislation issued by the state governor, which, unlike laws, are not submitted for debate to the state houses of assembly.²⁰⁷ Eventually, the Kano State House of Assembly passed a law in late 2003 regulating the hisbah; it includes the creation of a board composed of representatives of the main security agencies (including the police and the intelligence services) to oversee the hisbah and ensure that they are carrying out their duties properly.²⁰⁸

Shari'a implementation committees were set up just before the Shari'a legislation was introduced. They were given responsibility for overseeing the activities of the hisbah. Their members were selected by state governors and include religious leaders, lawyers, and civil servants. In addition to supervising the hisbah, they also advise state governors on the implementation of Shari'a.

²⁰⁷ Human Rights Watch interview, Zaria, July 26, 2003.

²⁰⁸ Human Rights Watch interview with Ibrahim Shekarau, Kano State Governor, Kano, August 17, 2004.

In late July 2003, the Zamfara State governor announced the creation of a new hisbah commission and several other commissions to regulate and monitor the application of Shari'a in the state. At a public gathering in Gusau on July 28, he outlined the functions of the hisbah commission. These included, among others, monitoring the implementation and application of laws relating to Shari'a; ensuring proper compliance with the teachings of Shari'a by workers in the private and public sector; monitoring the daily proceedings of Shari'a courts to ensure compliance with the Shari'a penal code and code of criminal procedure; reporting on all actions likely to tamper with the proper dispensation of justice; keeping a record of all people in prison with pending *budud* cases; taking every measure to sanitize society of all social vices and whatever vice or crime is prohibited by Shari'a; taking every measure to ensure conformity with the teachings of Shari'a by the general public in matters of worship, dress code, and social and business interaction and relationships; and enlightening the general public on the Shari'a system and its application.²⁰⁹

Despite the absence of legislation governing their activities in most other states, hisbah members and members of the general public in the areas where they operate interviewed by Human Rights Watch appeared to share a common understanding of certain rules governing their behavior, even if these are not always observed in practice. For example, it was understood that the hisbah effectively have powers of arrest if they catch a person in the act of committing a crime, and are supposed to hand the suspect over to the police. They are not supposed to take the suspect straight to court or administer the punishment themselves. While they are expected to arrest criminals, they are not supposed to enter people's private homes or spy on them merely on the basis of suspicion. In practice, however, the hisbah have often disregarded these and other guidelines and violated people's right to privacy. For example, residents reported that the hisbah would sometimes go from house to house, checking that people were not committing offenses, and in some cases searching for particular individuals on the basis of denunciations from other residents. Similarly, as in the cases of both Amina Lawal and Safiya Husseini, the hisbah were instrumental in apprehending the women after people had denounced them to the hisbah for committing adultery—even though they do not have the right to question women on how they became pregnant. However, in at least one case in Zamfara State in 2000, it was reported that a hisbah member who had reported the case of a woman seen with a man in a room was himself charged, admitted that he had spied on the woman, and was flogged.²¹⁰

²⁰⁹ Tape recording of speech by Zamfara State Governor Ahmed Sani, July 28, 2003.

²¹⁰ Human Rights Watch interview, Kaduna, July 23, 2003.

A local hisbah leader and schoolteacher in Kaduna described the main duty of the hisbah as one of guidance and education in relation to Shari'a. He told Human Rights Watch that their function was to ensure that Islamic law was implemented, and to enlighten people "to prevent them from going the wrong way." He said: "If someone commits a mistake, it is the duty of the hisbah to tell them it is unlawful. If the person changes his conduct, then it's OK. If he doesn't or continues making the mistake, it is the duty of the hisbah to report him. But the hisbah is not the police or the army. They just have a duty to guide people the right way. If a person offends once or even twice, they don't apprehend him."²¹¹ A hisbah leader in Kano gave a similar explanation of their duties: "Enforcement is done by the police and the courts. The hisbah is not a law enforcement agency per se. It is a supportive agency. If they apprehend someone, they preach to them. If the person refuses to change their ways, they hand them to the police [...] The hisbah are supposed to draw attention to transgressions. They enjoin people to do good or preach to prevent them from doing bad. In Shari'a, there is room for advice before you get to the courts."²¹² In practice, however, the hisbah have often abused this role and acted as a law enforcement agency.

There appears to be little or no structured training program for the hisbah. In some states, their members receive a brief outline of their duties, but do not receive substantial training, even though they are expected to monitor implementation of the law. A hisbah leader in Kaduna told Human Rights Watch that once they have been recruited, hisbah members are given a handbook in Hausa on the definition and duties of the hisbah, and other guidelines, such as how to approach people in the right manner. They are also given a lecture on their duties. He claimed that if a hisbah member committed a mistake, he would be punished, and if he repeated the mistake, he would be expelled.²¹³ By mid-2003, the hisbah had not yet received any formal training, but state governments had asked the faculty of law at Ahmadu Bello University in Zaria, in coordination with the Centre for Islamic Legal Studies, to train hisbah in all the states.²¹⁴

In the first one to two years after Shari'a was introduced, from 2000 to around 2002, there were numerous reports of abuses by the hisbah. Hisbah members would frequently arrest people and flog them or beat them on the spot, for a variety of offenses. In states such as Zamfara which prohibit men and women from traveling together in public, there were often cases where hisbah would stop vehicles carrying men and women and make the women disembark. They would also sometimes disrupt

²¹¹ Human Rights Watch interview, Kaduna, July 25, 2003.

²¹² Human Rights Watch interview, Kano, July 29, 2003.

²¹³ Human Rights Watch interview, Kaduna, July 25, 2003.

²¹⁴ Human Rights Watch interview, Zaria, July 26, 2003.

conversations between men and women in public places, on the grounds that such gatherings were immoral. There were cases where the hisbah used violence when seizing consignments of alcohol, sometimes destroying the alcohol and damaging the vehicles transporting it.

In the period immediately following the introduction of Shari'a, there were also cases where young men who may or may not have been members of the hisbah took the law into their own hands and attacked people for violating the Shari'a codes. There were several such cases in late 2000 and early 2001 in Kano State. For example during this period, in the neighborhood of Goron Dutse, Kano town, a man accosted a young couple who were talking outside a house and said to them: "Don't you know we have Shari'a? You can only court in the morning or in the afternoon." He slapped the young man and left. In another case, in a neighborhood known as Brigade, a young Muslim man was accused by other Muslims of bringing his girlfriend into the school; they punished him by burning his room.²¹⁵ On December 31, 2000, a group of youths broke into the house of a Christian man, Livinus Obi, who had bought alcohol to celebrate the New Year. Even though Christians are not bound by Shari'a, the youths searched Livinus Obi's house, and after finding some alcohol, pinned him to the ground and beat him. The youths were arrested and taken before the Shari'a court. However, Livinus Obi later dropped the case, reportedly because he felt he did not have enough support from his own community to see it through.²¹⁶

A proliferation of such incidents, where young men began taking the law into their own hands in the name of Shari'a, led the Kano state government to create an officially-recognized hisbah, in an attempt to regain control over the situation. However, some of the more ardent proponents of Shari'a were not satisfied with this official hisbah, and accused it of not doing enough to prevent consumption of alcohol, prostitution, and other practices considered unlawful. A group of individuals set up a second, independent hisbah, which, for a while, was operating in parallel with the official hisbah in Kano State. Both the official and the independent hisbah had their own members, structure and governing committee. Initially, there were tensions between the two groups, but by mid-2003, sources in Kano reported that the relationship had improved, and that the two hisbah had effectively merged.²¹⁷

²¹⁵ Human Rights Watch interview, Kano, July 30, 2003.

²¹⁶ Ibid. See also "Igbo trader: Shari'a court acquits suspects," *The Vanguard*, January 10, 2001, and "Obik first Igbo Shari'a victim speaks out," *The Vanguard*, January 13, 2001.

²¹⁷ Human Rights Watch interview, Kano, July-August, 2003.

Since 2003, abuses by the hisbah appear to have decreased. Although hisbah members have continued to ill-treat people in the course of arresting them, and to invade people's privacy on suspicion that they may have been committing an offense, such cases have become rarer. When Human Rights Watch visited several northern states in the second half of 2003, residents reported that the hisbah were now less visible and less active in monitoring observance of Shari'a, and that their activities were confined to less controversial roles, for example ensuring security in public places, such as markets or public functions, or directing traffic. In Kaduna—where Shari'a is applied much less stringently than in other states—the hisbah appear to be barely active, even though they have a recognized structure and membership. According to one resident of the state capital, the hisbah in Kaduna were not recognized beyond the vicinity of the mosque and were not seriously involved in monitoring Shari'a or in carrying out arrests.²¹⁸

The relationship between the hisbah and the police has been complicated. While the hisbah were set up by state governments, the police across Nigeria remains a federal institution, answerable to federal and not state structures. The existence of these two parallel structures, both of which have responsibilities for enforcing law and order, has resulted in conflicts of interest. The police is seen as a secular institution, and includes both Muslims and non-Muslims. Unlike the hisbah, the police do not have the specific mandate to ensure enforcement and implementation of Shari'a; yet in twelve states, they are operating in a context where Shari'a is legally in force (under state legislation, even if there are doubts as to its status under federal law), and where they should therefore logically be trying to enforce it. In practice, the police in the northern states have not taken on an active role as "Shari'a enforcers," nor have they actively sought to enforce new codes of behavior which were introduced alongside Shari'a, such as dress codes for women, segregation of sexes in public transport, and strict prohibition of alcohol.

There have been feelings of mutual suspicion and distrust between the hisbah and the police. Some Muslim leaders believed that the police would try to sabotage Shari'a after it was introduced; indeed the hisbah were created in part because the police were not trusted to enforce Shari'a. Nevertheless, when the hisbah have arrested people for criminal offenses and handed them over to the police, in many cases the police have taken on these cases and channeled them through the Shari'a jurisdictions. Despite this, some advocates of Shari'a have complained of a lack of cooperation from the police, and have claimed that when the hisbah apprehend suspects and hand them over to the police, the police often fail to follow up the cases, or release the suspects. The police, on the other hand, have claimed that the hisbah often arrest people on frivolous grounds, or on suspicion of committing acts which are not criminal offenses.

²¹⁸ Human Rights Watch interview, Kaduna, July 23, 2003.

On some occasions, the conflicting interests of the police and the hisbah have led to outright clashes. For example on May 30, 2003, in Hoto, Nasarawa local government, Kano State, police officers clashed with members of the hisbah who disrupted a wedding party on the basis that it was an “immoral gathering” and that music was being played.²¹⁹ A group of about twenty members of the hisbah group from neighboring Tarauni local government entered the compound of Abubakar Mohammed Ahmed, who was hosting the wedding ceremony, beat and injured several people, including some of the musicians and other guests, and smashed musical instruments as well as the windscreen of a vehicle parked at the house. According to the police, the hisbah were armed with knives, sticks, cutlasses, and long, curved weapons with a blade known as *barandami*.²²⁰ The incident was reported to the police the same day, and the police arrested about thirty members of the hisbah. However, the police eventually agreed to release them all without charge. A member of the hisbah from Tarauni local government told Human Rights Watch that Tarauni local government had passed a by-law banning immoral gatherings in 2002, following demands for such legislation from the local community.²²¹ However, Human Rights Watch later confirmed from Tarauni local government and from officials in the Kano state ministry of justice that no such by-law existed.²²²

The hisbah have attempted to prevent music from being played in ceremonies in other states too. For example, in Katsina State, in 2001, violent clashes were reported after musicians resisted attempts by the hisbah to prevent traditional musicians and praise-singers from operating.²²³ Also in 2001, it was reported that two musicians were tried by a Shari’a court in Funtua, Katsina State, and flogged for playing at a wedding ceremony.²²⁴ In Dutse, the capital of Jigawa State, in early 2003, a traditional ruler organized a wedding celebration for his daughter, at which music was played. The

²¹⁹ Some proponents of Shari’a believe that singing and music should be prohibited. This view originates from a Qur’anic verse which criticizes poets and a Prophetic tradition which only allows chanting accompanied by drums, and no other musical instrument. This view is usually only held by some elements among the Wahabi, an extreme offshoot of the Hanbali school of thought.

²²⁰ Human Rights Watch interviews with Hoto Divisional Police Officer and police investigator, Tarauni, Kano, July 30, 2003.

²²¹ Human Rights Watch interview, Kano, July 29, 2003.

²²² Human Rights Watch interviews with the Secretary of Tarauni local government, Kano, July 30, 2003; with the Kano State Director of Public Prosecutions and with the Solicitor General, July 30, 2003; and with the Director of the Legal Drafting Department, Kano State Ministry of Justice, July 31, 2003.

²²³ Human Rights Watch interview, Kaduna, July 27, 2003.

²²⁴ See “Shari’a: musicians caned for playing at wedding,” *ThisDay*, April 27, 2001.

hisbah came and tried to stop the celebration, but the traditional ruler's guards chased them away.²²⁵

Like many other issues in Shari'a, the issue of "immoral gatherings" is surrounded by contradictory explanations and vagueness as to its exact legal position. A statement by the Kano State Solicitor General to Human Rights Watch illustrates this confusion between on the one hand, interpretations of Shari'a and cultural or traditional practices or codes, and on the other, legal prescriptions: "Mixed gatherings are not permitted but they are not prohibited in the law."²²⁶ The Director of the Legal Drafting Department in the Kano State Ministry of Justice also claimed that Shari'a states that men and women cannot sit together in the same gathering and cannot dance or embrace each other; however, the Shari'a penal code for Kano State does not contain any reference to this issue.²²⁷

The hisbah and the police have sometimes also clashed over the enforcement of prohibition of alcohol. A source in Kano reported that following an incident in the first half of 2003 in which the hisbah had destroyed a truck carrying beer, truck drivers in Kano were asking for police protection when transporting alcohol—a situation which had led to friction between the police and the hisbah.²²⁸

The hisbah are not the only group enforcing the prohibition of alcohol. In Niger State, for example, a Liquor Board was set up by the state government on April 27, 2000. Later in the year, it was given the additional responsibility of eradicating prostitution. The chairman of the Liquor Board explained that it was not part of Shari'a, but assisted with the implementation of Shari'a: "We combat crime. Liquor consumption is the mother of all crimes."²²⁹ Niger State is divided into two areas: prohibited areas, which cover a 80 kilometer radius around nine towns within which no alcohol can be sold at all; and licensed areas, where alcohol can be sold after obtaining a license. The license fee is prohibitively high: between 200,000 naira and one million naira per year. The Liquor Board had not received any applications by mid-2003. Prior to granting a license, the Liquor Board would also have to seek the agreement of local residents on whether alcohol should be sold in these areas.

²²⁵ Human Rights Watch interview, Kano, July 30, 2003.

²²⁶ Human Rights Watch interview, Kano, July 30, 2003.

²²⁷ Human Rights Watch interview with the Director of the Legal Drafting Department, Kano State Ministry of Justice, Kano, July 31, 2003.

²²⁸ Human Rights Watch interview, Kano, July 30, 2003.

²²⁹ Human Rights Watch interview, Minna, August 7, 2003.

Members of the Liquor Board in Niger State have carried out arrests, usually following leads from a network of paid informants. According to its chairman, arrests were sometimes carried out in conjunction with members of the hisbah, as well as police officers. Like the hisbah, members of the Liquor Board are not supposed to enter people's homes to check if they are consuming alcohol, unless they have been told that alcohol is also being sold there. Although the Liquor Board has two prosecuting agents, who gather testimony and conduct investigations, the Liquor Board members do not have the powers to prosecute, and any cases should be handed over to the courts.²³⁰

IX. Freedom of conscience and religion, and the impact of Shari'a on non-Muslims

Unlike some other Muslim countries where Shari'a is in force, in northern Nigeria, Shari'a does not apply to the entire population, only to Muslims. As explained above, a parallel and separate judicial system is in operation to try criminal cases involving non-Muslims. Likewise, outside the criminal justice sphere, non-Muslims are not expected to conform to other aspects of Shari'a or social or cultural practices prescribed for Muslims. Human Rights Watch did not find evidence of a campaign to "islamize" Nigeria—as alleged by some critics of Shari'a—nor of systematic attempts by proponents of Shari'a to enforce it upon non-Muslims. In most northern states, non-Muslims do not face coercion or harassment of a religious nature. For example, in most cases, non-Muslims are able to consume alcohol, albeit sometimes only in designated areas or in their homes, and non-Muslim women are able to wear their own style of dress without adverse consequences—with some exceptions, illustrated above.

Apostasy (or renunciation of Islam) is not defined as a crime in the Shari'a codes in force in Nigeria. In April 2002, two Muslims were brought before a Shari'a court in Mada, Zamfara State, for converting to Christianity. The judge reportedly said that according to Islam, they should be sentenced to death, but threw the case out as there was no legal basis for a conviction in the Shari'a legislation in force.²³¹ Other cases where Muslims have converted to Christianity have not been pursued through the courts at all.

Nevertheless, non-Muslims have been directly or indirectly affected by certain aspects of Shari'a, and representatives of some churches and Christian organizations have reported instances of discrimination and marginalization. While Christians have always been a

²³⁰ Ibid.

²³¹ Human Rights Watch interview, Kaduna, July 26, 2003. See also "Islamic prosecutors seek death penalty for Nigeria's Christian converts," Associated Press, April 24, 2002.

minority in northern Nigeria and complained about social and cultural marginalization before the advent of Shari'a, these complaints have increased since the scope of Shari'a was extended in 2000.

Complaints from some Christian leaders have been vociferous; on occasions, they have tended to exaggerate the impact of Shari'a on non-Muslims, feeding into a climate of fear and suspicion. Nevertheless, these complaints should be taken seriously in the light of the real potential for an escalation of tension. Although Nigeria has a long history of religious tolerance, with Muslims and Christians living side by side for decades in different parts of the country, in recent years there have been several serious explosions of violence. Clashes between Muslims and Christians, often triggered by seemingly minor disputes, have led to thousands of deaths in northern and central Nigeria.²³² The worst riots were in Kaduna in 2000. A Christian leader in Zamfara State attributed this directly to the introduction of Shari'a in Zamfara: "When Yerima [the Zamfara state governor] set the time-bomb, it didn't explode here; it exploded in Kaduna."²³³

Since the extension of Shari'a, there have also been religious tensions and sporadic incidents of violence in several other northern states, including Kano, Jigawa, and Bauchi. Some though not all of these were sparked by disagreements over the introduction of Shari'a to criminal law; more generally, Shari'a had the effect of hardening positions and accentuating the polarization between Muslims and Christians.

The general insecurity caused by these incidents of violence created fears among some non-Muslim communities in the north, leading many to move away from the area. In a typical example, a Christian taxi-driver who had lived in Kano for fifteen years told Human Rights Watch why he had decided to move to the federal capital Abuja: "Business was bad because of all this Shari'a. People became frightened of more clashes."²³⁴ In some states, such as Zamfara where an estimated five to ten percent of the population is Christian, the introduction of Shari'a in late 1999 was enough to drive

²³² The most serious waves of killings took place in Kaduna State, in 2000 and 2002, and in Jos, Plateau State, in 2001. For details, see Human Rights Watch reports "The 'Miss World riots': continued impunity for killings in Kaduna" (July 2002) and "Jos: a city torn apart" (December 2001). As federal and state governments have continually failed to deal with the grievances underlying these disputes, tensions have continued, leading to further killings, especially in Plateau State, from 2002 onwards; violence in Plateau State reached a peak in the first half of 2004. Even though the roots of these conflicts are more political and economic than religious, the religious dimension has been actively used to stoke up tensions.

²³³ Human Rights Watch interview, Gusau, August 2, 2003.

²³⁴ Human Rights Watch interview, Abuja, July 18, 2003.

many Christians away, even though there had not been any outbreaks of physical violence. Many Christians who left at that time have not returned.²³⁵

Some church leaders in Zamfara have complained of difficulties in obtaining land and accommodation. In late 1999, an Anglican leader in Gusau was refused accommodation by three different landlords and was told by a fourth, first that the accommodation was going to be let to someone else, then that he would have to pay double the rent.²³⁶ The Anglican church in Zamfara also encountered numerous obstacles and delays when applying for permission to build a church, a nursery and accommodation. Christian leaders in other northern states have also complained about difficulties in obtaining authorization to build churches. Some have reported that churches have been demolished on the pretext that they had been illegally constructed and did not have the correct certificates.²³⁷ Churches in Zamfara State reported being denied airtime on the state radio; the state governor justified this by saying that Muslims in the east of Nigeria had been denied their rights too.²³⁸ The governor himself told Human Rights Watch: “I allowed Christians to build churches to show freedom but in the south, they don’t allow mosques to be built. They demolish them.”²³⁹ Christian leaders have also complained that Christians are not represented in the state ministry of religious affairs.

The prohibition on the sale and consumption of alcohol has affected Christians too. In the first one to two years following the introduction of Shari’a, hisbah forcibly entered hotels, bars and other establishments selling alcohol and destroyed the alcohol that they found there; they also intercepted trucks and other vehicles on the roads and destroyed the consignments of alcohol. Such reports were especially common in Kano State, perhaps because it is more culturally and religiously mixed than some other northern states.²⁴⁰ Apart from the physical damage caused, these attacks, and the threat of further

²³⁵ Human Rights Watch interview, Gusau, August 2, 2003.

²³⁶ Ibid.

²³⁷ Incidents in which churches were destroyed and other examples of discrimination against Christians in Zamfara State are detailed in a paper entitled “Peace and Democracy in Nigeria,” by the Christian Association of Nigeria (CAN), Zamfara State, addressed to the National Orientation Agency, December 2001. See also “Christian elders condemn mass demolition of churches in north,” *The Guardian*, August 20, 2001. Cases of destruction of churches were reported even before the introduction of the Shari’a legislation in 2000, particularly in Kano. See “Democracy and minority rights in Nigeria: Religion, Shari’a and the 1999 Constitution,” by Jibrin Ibrahim, International Human Rights Law Group, 2002, and “The Talibanization of Nigeria: Shari’a law and religious freedom,” Center for Religious Freedom, Freedom House (Washington, D.C.), April 2002.

²³⁸ Human Rights Watch interviews, Gusau, August 2, 2003.

²³⁹ Human Rights Watch interview with Zamfara State Governor Ahmed Sani, August 4, 2003.

²⁴⁰ Human Rights Watch interviews, Kano, July 2003. See also “Beer row in northern Nigeria,” BBC News online, August 13, 2001, and “Governor, police meet as Shari’a enforcers torch bars, restaurants in Kano,” *The Guardian*, April 18, 2001.

such attacks, had serious consequences for Christian businessmen and traders who depended on the sale of alcohol for a living.

The ban on alcohol has affected not only Christians, but also other non-Muslim communities, whose traditions and customs include the consumption of alcohol. Such traditionalist communities exist in several states, including Niger, Kebbi, and Kano. In 2000, clashes were reported between members of some of these communities in Niger and Kebbi states after the hisbah aroused their anger by destroying alcohol and trying to prevent them from drinking.²⁴¹

In Zamfara State, legislation entitled “Certain Consequential Reforms (socio-economic, moral, religious and cultural) Law” was passed in 2001. The law, which contains a list of restrictive measures affecting many aspects of social and cultural life, has had negative consequences for both Muslims and non-Muslims. A particular group of Muslims has fallen foul of this law, under which it became an offense to observe certain Islamic rituals on a day different from that announced by the government. The law states: “No Muslim in the State shall observe the performance of Ramadan fasting or any of the Eids prayers on any date other than the date announced by the government under the provisions of this law” and “Any Muslim who violates the provision of subsections (iv) of this Law shall be guilty of an offence which upon conviction shall be sentenced to imprisonment for a period not exceeding one year or to caning not exceeding 50 strokes or both.”²⁴²

In December 2001, the police arrested seventy-seven followers of a Muslim group known as *Jama'at el-Islah wa el-Da'wa wa ma yata'allaq bi-ru'yati el-bilal* (Group for reform and propagation and matters related to the sighting of the crescent). Members of this group believe that they must see the moon with their own eyes before beginning or ending the fast in Ramadan; their fasting days may therefore differ from those prescribed by the government. Thirty-six people were arrested in Bukkuyum local government, twenty-four in Maru, and seventeen in Kaura Namoda. Some of the accused in Maru and Bukkuyum reported being tortured by the police with a view to making them rescind their beliefs. Those in Bukkuyum were detained for five days in the police station without food or water; they included eighty-six-year-old Mohammed Bahaushe, who died two days after his release. The accused were tried by a Shari'a court in Bukkuyum. The judge initially told the lawyer who was defending them that legal

²⁴¹ Human Rights Watch interviews, Abuja, July 21, 2003; Kaduna, July 26, 2003; and Birnin Kebbi, December 16, 2003. See also “Nigeria: deaths over drink,” BBC News online, November 21, 2000.

²⁴² Section 2, subsections iv and v of Certain Consequential Reforms (socio-economic, moral, religious and cultural) Law 2001.

representation was not acceptable under the Islamic legal system. The lawyer stood his ground, but the judge immediately convicted the defendants on the basis that they admitted praying on a day different from that set by the government. They were sentenced to a fine of 5,000 naira each (approximately US \$35) or six months' imprisonment. They paid the fines and filed an appeal at the state high court for breach of the right to practise their religion and for inhuman treatment. In Maru and Kaura Namoda local governments, the prosecution eventually dropped the case following objections by the lawyer.²⁴³

In December 2001 and December 2002, it was reported that followers of the same group were dispersed with teargas in Gusau for praying on a different day from that prescribed by the government.

When Human Rights Watch raised these cases with the Zamfara State governor, he said: "This is not an issue of freedom of religion. Or else they are not Muslims [...] The law should be obeyed. If people don't like it, they can challenge it through the courts."²⁴⁴

X. The impact of Shari'a on freedom of expression

Restrictions on freedom of expression are common throughout Nigeria, despite an outward appearance of openness and tolerance of criticism.²⁴⁵ Some critics or opponents of Shari'a have claimed that the introduction of Shari'a has led to a further clampdown on freedom of expression in the north. Human Rights Watch did not find substantial evidence of a systematic repression of criticism on the part of northern state government authorities, but a climate has been created in which people are afraid or reluctant to voice criticism of Shari'a and, by extension, of the policies or performance of state governments. Those affected were Muslims rather than Christians. There were instances, soon after Shari'a was introduced, when government critics, including some Islamic leaders and scholars, were publicly discredited or ridiculed. Open and frank debate about the advantages or disadvantages of introducing Shari'a was strongly discouraged and, in some instances, suppressed. A man from Yobe State who had expressed reservations about the manner in which Shari'a had been introduced was warned by the imam in his village not to air his views on the matter.²⁴⁶ An activist from

²⁴³ Human Rights Watch interview, Gusau, August 3, 2003.

²⁴⁴ Human Rights Watch interview with Zamfara State Governor Ahmed Sani, Gusau, August 4, 2003.

²⁴⁵ See Human Rights Watch report "Nigeria: Renewed crackdown on freedom of expression," December 2003.

²⁴⁶ Human Rights Watch interview, Kano, July 30, 2003.

Kaduna noted: “Religion is used to cordon off criticism. You can only discuss Shari’a if you are pro-Shari’a.”²⁴⁷

In 2000, Shehu Sani, director of the Civil Rights Congress, a human rights organization in Kaduna, was threatened and intimidated after criticizing the introduction of Shari’a; he had stated in a radio interview that Shari’a was being used by politicians to increase their popularity and to insulate themselves from the people they governed. He claimed that following his interview, anonymous pamphlets were circulated, calling for him to be killed because he was “anti-Shari’a,” and clerics in several mosques in Kaduna condemned him for his comments.²⁴⁸

In 2001, the police prevented the Civil Rights Congress from holding a three day seminar on Shari’a and the 1999 constitution, in Zaria. The Kaduna state commissioner police later stated that they had taken this action in order to avert a breakdown of law and order. According to the Civil Rights Congress, the intervention by the police was prompted by threats by some Islamic clerics who opposed the conference on the grounds that the Civil Rights Congress and its director were “anti-Shari’a;” they had reportedly written to the Kaduna state governor and commissioner of police threatening to unleash chaos if the conference went ahead.²⁴⁹

Islamic leader Ibraheem Zakzaky, based in Zaria, Kaduna State, was also labeled as anti-Shari’a for criticizing the manner in which Shari’a had been introduced. Zakzaky, the leader of a group sometimes referred to as the Shi`a or Muslim Brothers, had expressed his belief that the conditions in Nigeria were not right for the introduction of Shari’a, and that Shari’a can only be implemented by an Islamic government in an Islamic state. He told Human Rights Watch that after being vilified in the press for expressing these views, he had felt compelled to take out advertisements explaining that he did not oppose Shari’a, but believed it should be applied in a proper way.²⁵⁰

In April 2003, Islamic teacher and scholar Hussaini Umar was arrested in Kaduna and detained in an undisclosed location. Neither his family nor others close to him were informed of his whereabouts or of the reasons for his arrest. Sources close to Hussaini Umar believe that his arrest and detention in a secret location were linked to his

²⁴⁷ Human Rights Watch interview, Abuja, July 23, 2003.

²⁴⁸ Human Rights Watch interview, Abuja, July 23, 2003.

²⁴⁹ Ibid.

²⁵⁰ Human Rights Watch interview, Zaria, July 27, 2003. For a fuller explanation of Zakzaky’s views on the appropriateness of introducing Shari’a in Nigeria, see “Why 79 constitution adopted penal code, by Williams,” *The Guardian*, June 26, 2000.

criticisms of the government. His criticisms had focused, among other things, on the manner in which Shari'a had been introduced in Nigeria. One year later, in April 2004, he remained disappeared.²⁵¹ Human Rights Watch was also told about a civil servant in Sokoto State, Mohammed Bello Yabo, who was reportedly detained for a prolonged period for criticizing the political use of Shari'a; however, we were not able to independently verify details of this case.²⁵²

Self-censorship

Although there have been few documented incidents where people have been arrested, detained, or subjected to other forms of serious abuse directly in connection with their views on Shari'a, there is a strong reluctance among Nigerian northern society to express explicit or public criticisms of Shari'a or of the manner in which it is applied. Human Rights Watch researchers observed a form of self-censorship among critics—including academics, human rights activists, members of women's organizations, lawyers and others—who were willing to express strong reservations about Shari'a in private conversations, but not in public. They claimed that it was not possible, or too dangerous, to express such views in public. A man in Kano said that the Muslim elite felt ashamed and angry at the way Shari'a was being implemented, but did not feel safe expressing these views.²⁵³

Their reluctance to express criticism publicly appears to be based primarily on a fear of being labeled as anti-Islamic—a charge commonly leveled against perceived critics of Shari'a. Very few Muslims in northern Nigeria—however strong their criticisms of Shari'a – are willing to take the risk of being perceived in this way. The consequences of this self-censorship have been a virtual silence on the part of northern civil society about the more controversial aspects of Shari'a, including some of the more blatant human rights abuses, and, for a long time, the absence of genuine, open public debate on these questions.

The politicization of religion has meant that criticism of northern state governments is also automatically labeled as criticism of Islam, even when it is not connected to issues of religion or religious law, and even when it focuses on specific legal or technical points. In the aftermath of the 1999 elections, opposition parties in the north were often described as anti-Islamic if they criticized the state government. Around 2000, it was

²⁵¹ For further details of the disappearance of Hussaini Umar, see Human Rights Watch report "Nigeria: Renewed crackdown on freedom of expression," December 2003.

²⁵² Human Rights Watch interview, Kaduna, July 25, 2003.

²⁵³ Human Rights Watch interview, Kano, July 30, 2003.

reported that a labor union in Zamfara was tagged “anti-Shari’a” for criticizing the Zamfara government for using state funds to build a hotel in Abuja.²⁵⁴

A Muslim man from Kaduna summarized the situation as follows:

Deep down, people are fed up with Shari’a. But Muslims are ashamed to say ‘we don’t want Shari’a.’ There is no room for explanation about why we are saying no. In Zamfara, saying no to the governor is like saying no to Islam. Challenging the government is like challenging Islam. If there were a secret vote, the ‘no’ would win, but people won’t come out and say so. There was a war about it in 2000 [riots and killings in Kaduna], so if they [Muslims] denounce Shari’a now, it would mean that all those people had died in vain. There is a fear of being misunderstood, so people keep quiet. They would be seen as blasphemous. It was a deliberate deception from the beginning. In real Shari’a, you should be able to challenge openly, for example to say to a governor: ‘where did you get that shirt from?’ They don’t want that.²⁵⁵

A researcher in Kano explained:

Debate within Islam has been prevented by sensationalism. There used to be debates before [...] about what to do in a multi-faith, multi-cultural country. But it became a debate between those for and those against. It is difficult to raise issues within Islam. Even those who wanted to raise issues of modernity had to back-track. Internal debates became highly conflictual. ‘If you’re not with us, you’re against Islam.’ The debate became violent verbally. Those expressing views publicly were accused of challenging Islam.²⁵⁶

Since around 2003, the climate appeared to be shifting slightly, with a greater opening of debating space, and some newspapers, such as the Daily Trust, widely read in the north, publishing articles by Muslim writers who were openly critical of the application of Shari’a. A human rights activist and academic in Kaduna explained: “The atmosphere is calmer now. People can discuss the issue more freely. In 2000 and 2001, people were either for or against Shari’a. Now there is a more sober discussion.”²⁵⁷

²⁵⁴ Human Rights Watch interview, Abuja, July 23, 2003.

²⁵⁵ Human Rights Watch interview, Abuja, July 21, 2003.

²⁵⁶ Human Rights Watch interview, Kano, July 31, 2003.

²⁵⁷ Human Rights Watch interview, Kaduna, July 23, 2003.

However, most nongovernmental organizations in the north, including human rights groups and women's groups, have still preferred to avoid addressing head-on the controversial issues which are seen as central to Shari'a, such as the nature of some of the punishments, and have concentrated their activities on raising public awareness, training, and other less sensitive areas. Some of these groups have played an important role in providing defense lawyers in cases before the Shari'a courts; but many of these lawyers too have concentrated on technical and procedural aspects of cases. One of the lawyers involved in the defense of Amina Lawal explained that the legal team decided not to challenge the constitutionality of the Shari'a court of appeal in Katsina State (see below), and claimed that it was in the interests of the defendant to argue the case within the framework of Islamic law: "If we argue the constitutional point, people would assume we were against Shari'a."²⁵⁸ Other groups, in particular women's organizations, have prioritized work in the area of personal status law, for example activities on inheritance, custody and domestic rights, rather than criminal law.

As a result, most of the public criticisms of Shari'a have come either from predominantly Christian civil society groups based in the south or other parts of Nigeria, or from foreign or international organizations. This has led to an increased polarization of opinion, and a perception that Christian or Western organizations are leading the "attack" against Shari'a. The more nuanced criticisms of the Muslim population of the north have not been heard.

XI. The politicization of religion: reactions to the implementation of Shari'a

Many Muslims interviewed by Human Rights Watch in northern Nigeria explained that they had become increasingly disillusioned with the way Shari'a was being implemented in their states. Nevertheless, there is still a strong wish to retain Shari'a among the general public in the north, on condition that it is done faithfully and sincerely. A man in Kano summed up the situation three years after Shari'a was introduced: "The public were sincere in demanding Shari'a but the government was not sincere in giving it to them."²⁵⁹ Another activist in Kano described the public mood as ambivalent: "People want Shari'a but are not satisfied with what they're getting."²⁶⁰

²⁵⁸ Human Rights Watch interview, Abuja, August 7, 2003.

²⁵⁹ Human Rights Watch interview, Kano, July 30, 2003.

²⁶⁰ Human Rights Watch interview, Kano, July 6, 2004.

One of the main complaints voiced by Muslims has been that government authorities have not observed the true spirit and original principles of Shari'a, and that religion has been reduced to a political tool because of the way Shari'a has been implemented. Many people we interviewed explained that in the rush to introduce Shari'a and to prove a political point, state authorities had disregarded certain fundamental principles, in particular the state's responsibility towards the population, and the generosity, compassion, and forgiveness which Shari'a advocates towards those accused of crimes. Many Muslims have pointed out that Shari'a promotes fundamental rights including the right to life, to justice, and to equality, but that these were also being disregarded in its application in Nigeria.²⁶¹ They claimed that if the governors had been sincere and had wanted to apply Shari'a properly, they would have taken more time and care to prepare and educate the public, and abuses could have been minimized. A representative of a nongovernmental organization in Kaduna told Human Rights Watch: "Most Shari'a trials are stage-managed [...] to terrorize people and to manipulate gullible subjects [...] The politicians have hijacked the minds of the electorate. There should be public education on what Shari'a really is. If people had known, they would not have allowed themselves to be manipulated by politicians."²⁶²

Many Muslims told Human Rights Watch that according to their understanding, punishment was the least important aspect of Shari'a, that the first priority should be for the state to provide for the people and that it should fulfill its responsibilities in that respect—by ensuring that everyone had a reasonable standard of living, access to housing, health, and education—before turning to the system of punishment. A Muslim from Kaduna expressed the following view: "This is not real Shari'a. They should first create a conducive environment and empower people. Then they should give you grace. Then they should implement Shari'a. The economic and social aspects should come first. Instead, the punitive aspect is coming first."²⁶³ A women's rights activist in Kano summed up the disappointment experienced by many people who had initially been in favor of Shari'a: "My understanding of Shari'a has been shattered. Even in Zamfara, there is no meaningful development. The amenities are not there. They haven't addressed poverty."²⁶⁴ A member of another nongovernmental organization echoed these views: "We started the implementation from the top, not the bottom. That's

²⁶¹ For a concise summary of some of the fundamental rights under Shari'a, including the rights of women, see Dr Muhammed Tawfiq Ladan, "Women's rights and access to justice under the Shari'a in Northern Nigeria" in "Shari'a and Women's Human Rights in Nigeria – Strategies for Action," Joy Ngozi Ezeilo and Abiola Akiyode Afolabi (eds.), a publication of the Women Advocates Research and Documentation Center (WARDC) and Women's Aid Collective (WACOL), 2003.

²⁶² Human Rights Watch interview, Kaduna, July 25, 2003.

²⁶³ Human Rights Watch interview, Abuja, July 21, 2003.

²⁶⁴ Human Rights Watch interview, Kano, July 29, 2003.

where we got it wrong. There is a punitive dimension in Shari'a, yet Shari'a says there should first be an enabling environment. People should be provided with welfare and there should be no corruption."²⁶⁵ However, an Islamic cleric in Kaduna expressed a different view: "Standards of living are not relevant to the question of Shari'a. Shari'a comes first. Shari'a is the reason for raising the standard of living. The government doesn't give food to the people. God gives food to the people."²⁶⁶

Criticism among the northern Muslim population has also centered on the manner in which politicians seized on Shari'a in their pursuit of electoral success. In the run-up to the 2003 elections, candidates for political office in the north, especially in the governorship elections, included religion as a central component of their election campaign, and to a large extent, were judged by the population on the degree of their commitment, or lack of commitment, to Shari'a. An Islamic leader in Kaduna State said that all candidates for governorship in the north spoke of implementing Shari'a if they won the 2003 elections, and claimed that saying they would not implement Shari'a would have been "political suicide."²⁶⁷ Voters in Kano contrasted the former state governor, Rabi'u Kwankwaso, with the new governor, Ibrahim Shekarau, elected in April 2003. Rabi'u Kwankwaso was seen as unenthusiastic about Shari'a and was known not to favor harsh punishments. It was said that he only agreed to the introduction of Shari'a into Kano State because of public pressure. However, Ibrahim Shekarau's election campaign centered on a return to traditional Islamic values and a genuine commitment to the full implementation of Shari'a. He has since apparently earned the respect of many Muslims inside and outside Kano State, not for backing the harsher punishments within Shari'a, but for promising to concentrate on popular welfare and adopting what they see as a more principled stance than his predecessor or other state governors.²⁶⁸

From around 2000, support for Shari'a also became part of the election platform for Muhammadu Buhari, the main opposition presidential candidate who ran against President Obasanjo in the 2003 elections. Buhari sought to exploit his credentials as a Muslim and a northerner in appealing to voters in the north and professing his commitment to Shari'a. As the 2003 elections approached, the issue of religion became politicized along party political lines, with ANPP candidates across much of the north being seen as generally pro-Shari'a, while candidates of other parties, especially the ruling People's Democratic Party (PDP), being seen as anti-Shari'a. A lawyer told Human Rights Watch that in the 2003 elections, many people voted along religious lines, and

²⁶⁵ Human Rights Watch interview, Kaduna, July 25, 2003.

²⁶⁶ Human Rights Watch interview, Kaduna, July 25, 2003.

²⁶⁷ Human Rights Watch interview, Zaria, July 27, 2003.

²⁶⁸ Human Rights Watch interviews in Kano, Abuja, and other locations, July, August and December 2003.

that Muslims who voted for the PDP or for President Obasanjo were viewed as “traitors.”²⁶⁹ Shari’a had become a question of both religious and political identity.

The politicization of Shari’a was demonstrated most clearly in Zamfara State. Although many Muslims were in favor of its introduction, the manner in which the state governor appropriated the issue provoked disappointment and cynicism, as summarized by this comment by a Muslim man in Kano: “In the 1999 elections, the Zamfara governor didn’t look likely to win. His campaign team were trying to think of what they could do to win. Someone suggested campaigning on Shari’a. They said that’s it, and went out and campaigned on Shari’a. People latched onto it. It was a very fraudulent way to bring it in. They did not do it for the people, but to win the elections. Then it became a bandwagon and other states all wanted it.”²⁷⁰

Reactions to the introduction of Shari’a from non-Muslim sectors of the public were, on the whole, negative. Although they did not fall under the new jurisdiction, Christians across Nigeria strongly opposed it. Several Christian leaders spoke out against the move, fearing that it might herald a greater “expansion of Islam” which could eventually encroach on other parts of the country. Some southerners also feared the political consequences of what they saw as a strengthening of power of the northern elite, and the unwillingness of the federal government to challenge or contain it. Some civil society groups, including human rights organizations, opposed it on the grounds that Shari’a contained inherent infringements of fundamental rights and that it was incompatible with the Nigerian constitution. However, most of the organizations who spoke out were those based in the south of Nigeria. For reasons described above, most members of civil society in the north did not express their reservations in public.

In some areas, existing tensions between Muslims and non-Muslims became suddenly aggravated by the introduction of Shari’a and its perceived political significance. The most dramatic manifestation of this was the explosion of violence between Muslims and Christians in Kaduna State in February and April 2000. At least 2,000 people, and probably many more, were killed as Muslims and Christians attacked each other, following a debate around the proposed introduction of Shari’a into Kaduna State.²⁷¹

²⁶⁹ Human Rights Watch interview, Kaduna, July 24, 2003.

²⁷⁰ Human Rights Watch interview, Kano, July 30, 2003.

²⁷¹ For background information on the 2000 riots in Kaduna, and the subsequent riots in 2002, see Human Rights Watch report “The ‘Miss World riots’: continued impunity for killings in Kaduna,” July 2003.

The 2000 Kaduna riots shocked Nigerians of all faiths and prompted the federal government to hold talks with northern state governors to seek ways of averting further religious violence. On February 29, 2000, federal government officials, including President Obasanjo, held a meeting with state governors at which, according to the President and Vice-President, it was agreed to put Shari'a on hold: "all States that have recently adopted Shari'a Law should in the meantime revert to the status quo ante."²⁷² However, within two weeks, the governor of Zamfara State was quoted as saying that there had been no such agreement and that northern governors would not withdraw Shari'a.²⁷³ In Kaduna, however, plans to introduce Shari'a were postponed after the violence. Eventually, Shari'a legislation was introduced in the state on November 2, 2001, but in a watered-down form, applying only in Muslim-majority areas, in a bid to avert further violence.

Christians were not the only ones to oppose the introduction of Shari'a. Some Muslims, including a number of Islamic clerics and teachers, objected to it on the grounds that it was being done for political rather than religious motives. An Islamic teacher in Kaduna told Human Rights Watch: "The penal code of northern Nigeria was working well until some states like Zamfara began agitating for Shari'a. Their motives were purely political. It had nothing to do with religion. The real needs of the people are health, education etc. The politicians did nothing about that. Instead, they made a big fuss about Shari'a. There is manipulation by politicians. When politicians failed people and delivered nothing to them, they said we'll give you Shari'a, to gain popularity. The call for Shari'a contributed to violence and social tension between Muslims and non-Muslims, and even among Muslims themselves." He explained that the introduction of Shari'a was an obstacle for propagators of Islam, such as himself; he believed that the call for Shari'a was a distortion of Islam and would not benefit people in the north.²⁷⁴

XII. International reactions to Shari'a in Nigeria

At the international level, the introduction of Shari'a in 2000 suddenly threw Nigeria into the spotlight. The sentences of death by stoning imposed on Safiya Husseini and Amina Lawal were at the centre of an unprecedented level of public attention and provoked reactions of outrage among women's organizations, human rights organizations, parliamentarians, Christian organizations, and members of the general public in many

²⁷² Text of President Olusegun Obasanjo's address to the nation, March 1, 2000, distributed by the Africa Policy Information Center. See also "Islamic law revoked in Nigeria after hundreds die," Agence France-Presse, February 29, 2000.

²⁷³ "Zamfara governor adamant on Shari'a," *The Vanguard*, March 13, 2000.

²⁷⁴ Human Rights Watch interview, Kaduna, July 25, 2003.

countries. Their cases were the object of massive public protests, appeals and petitions from around the world. Some of these interventions focused specifically on the cases of Safiya Husseini and Amina Lawal, urging the government to ensure that their lives were spared. Others also called for an end to discrimination against women and an abolition of the death penalty.

Several Western governments and intergovernmental organizations, particularly the European Union, also took up the issue of Shari'a with the Nigerian government, both privately and publicly. Their readiness to do so and the strength of these diplomatic interventions contrasted starkly with the almost complete silence on the part of these same governments on the multitude of other human rights problems in Nigeria. For political reasons, it was easier for these governments to raise the issue of Shari'a with President Obasanjo, knowing that he personally did not favor Shari'a and shared some of their concerns about the harsh punishments. Their diplomatic approaches could therefore be less confrontational on Shari'a than on other patterns of human rights violations in Nigeria, especially as their criticisms would not be perceived as directly implicating federal government authorities and agencies, other than in terms of their failure to confront the issue.

While most of the international public protests were motivated by a genuine concern for the victims, some of the media coverage in the West was ill-informed and painted a sensationalist picture of the situation in Nigeria. Some articles and reports gave the impression, for example, that Shari'a was applied throughout Nigeria, that the stoning of the women was imminent, and that these were the most urgent—and indeed the only—human rights problems in Nigeria. The unfortunate, if unintended, effect of some of this coverage was the perception within northern Nigeria that these criticisms were motivated by stereotypical, anti-Islamic feelings, which took no account of the reality in the country. Vocal attacks by Christian groups from the political right, especially in the United States, only served to confirm this perception, sometimes using alarmist and misleading language and describing northern Nigeria as a hotbed of Islamic fundamentalism. In the climate of fear which spread throughout the West following the attacks of September 11, 2001 in the U.S., there was a readiness to interpret the introduction of Shari'a in Nigeria as a further strengthening of resolve on the part of Islamic militants and the introduction of Shari'a as a gesture of defiance on the part of Muslim “extremists.”²⁷⁵ Renewed clashes between Muslims and Christians in Kaduna and Plateau states reinforced these perceptions, even though most of these conflicts were localized and did not have their origins in religious differences; the fact that

²⁷⁵ See for example “The Talibanization of Nigeria: Shari'a law and religious freedom,” Center for Religious Freedom, Freedom House (Washington, D.C.), April 2002.

Christians and Muslims shared the blame for this violence was largely ignored, as was the fact that Shari'a is not even applied in Plateau State.²⁷⁶ In reality, the vast majority of Nigerian Muslims do not subscribe to "extremist" ideals and, as indicated in this report, are deeply disappointed with political and religious leaders' appropriation of the Shari'a agenda.

An additional complication arising from the exaggeration or distortion of the situation in Nigeria in some Western circles has been a polarization of opinion among nongovernmental organizations. As mentioned above, most Nigerian human rights and women's organizations have opted for a strategy of non-confrontation on Shari'a, preferring to work through the legal system or behind the scenes to achieve change. Their strategy contrasted with the huge international outcry and public protests around the world on the cases of Safiya Husseini and Amina Lawal. Overall, there is little doubt that the persistent efforts of Nigerian organizations as well as the more public campaigns of international organizations have both had a positive effect in minimizing human rights violations, and the two approaches can be seen as complementary. However, some Nigerian activists have claimed that these international protests were counterproductive and could have a harmful effect on the cases; some went as far as appealing publicly to international groups to stop their public campaigns and appeals.²⁷⁷

XIII. Shari'a and the Nigerian constitution

One of the most hotly debated, and so far unresolved, questions in relation to Shari'a has been whether Shari'a courts have the jurisdiction to try criminal cases under the Nigerian constitution. To date, the federal government has avoided taking a clear position on the matter and it has been left to lawyers, academics and nongovernmental organizations to debate the issue. Meanwhile, criminal cases have continued to be brought before the Shari'a courts, and people have continued to be sentenced.

The controversy has centered around several sections of the constitution.²⁷⁸ Firstly, Section 10 of the constitution specifies: "The Government of the Federation or of a

²⁷⁶ See Human Rights Watch reports "Jos: a city torn apart," December 2001, and "The 'Miss World riots': continued impunity for killings in Kaduna," July 2003. For an analysis of the role of radical Islam in Nigeria, and related issues, see Peter M. Lewis, "Islam, protest, and conflict in Nigeria," in *Africa Notes*, December 2002, Center for Strategic and International Studies (Washington DC).

²⁷⁷ See "Please stop the international Amina Lawal protest letter campaigns," by Ayesha Imam and Sindi Medar-Gould of Baobab for Women's Human Rights, May 2003.

²⁷⁸ All sections quoted in this report are from the Constitution of the Federal Republic of Nigeria 1999. There were even more heated debates on the place of Shari'a in the constitution in previous years, in particular around the enactment of the 1979 and 1989 versions of the constitution; much of the debate then focused on

State shall not adopt any religion as State Religion.” Many Nigerians have described the adoption of Shari’a as the equivalent of adopting a state religion in the northern states. Northern state governors, however, have argued that this is not the case, as Shari’a applies only to Muslims, not to Nigerians of other faiths.

In the debates around Shari’a, Section 10 of the constitution has often been juxtaposed with Section 38, on freedom of religion, which has been interpreted differently by different parties. Section 38 (1) of the constitution states: “Every person shall be entitled to freedom of thought, conscience and religion [...] and freedom [...] to manifest and propagate his religion or belief in worship, teaching, practice and observance.” Non-Muslims have argued that the imposition of Shari’a violates the right to freedom of religion and affects non-Muslims, even though they are supposed to be exempt from the law. Advocates of Shari’a have referred to the same provision to justify the application of Shari’a as an integral part of Islam. Some have described attempts to stop or curb the implementation of Shari’a as a violation of their own right to freedom of religion as Muslims.

There has also been an intense argument over whether state governors have the powers to extend the jurisdiction of Shari’a courts to criminal law or to create new courts. The constitution mentions Shari’a state courts of appeal (sections 275 to 279) but refers to their jurisdiction only in the area of “civil proceedings involving questions of Islamic personal law” and does not mention that they have powers to try criminal cases. Critics of Shari’a have therefore argued that it is unconstitutional for Shari’a courts to try criminal cases. Northern state governors, however, have insisted that they have the powers to do so. The legislative power of the government in Nigeria is divided between the federal and state governments, as specified in Section 4 of the constitution. Section 6 of the constitution empowers states to establish courts “to exercise jurisdiction at first instance or on appeal on matters with respect to which a [state] House of Assembly may make laws;” and Section 4 (7) gives state houses of assembly the power to “make laws for the peace, order and good government of the State” for any matters not included in the Exclusive Legislative List, any matter included in the Concurrent Legislative List,²⁷⁹

whether the constitution should provide for a Shari’a court of appeal at the federal level. The 1979 constitution forms the basis for the 1999 constitution currently in force. For details, see “An opportunity missed by Nigeria’s Christians,” by Philip Ostien, Faculty of Law, University of Jos, presented at a conference on “The Shari’a debate and the shaping of Muslim and Christian identities in Northern Nigeria,” University of Bayreuth, 11-12 July, 2003. A range of views on Shari’a and the Nigerian constitution can also be found in “Shari’a and the 1999 Constitution: Proceedings of a three-day conference on the controversial introduction of Shari’a legal system by some northern states in Nigeria and the implications for 1999 Constitution, March 29-April 1, 2001,” Civil Rights Congress (Kaduna), 2001.

²⁷⁹ Only the federal government can legislate on matters in the Exclusive Legislative List. For matters on the Concurrent Legislative List, laws can be enacted either by the federal or state governments. (Both lists are

and “any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.” State governments have argued that these provisions give them the right to introduce Shari’a legislation, and to create courts, on the grounds that these are intended for good governance of their states.

A further argument advanced by critics of Shari’a is that Shari’a discriminates against Muslims. Section 42 (1) of the constitution guarantees the right to freedom from discrimination: “A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such as person – a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject.” Since the introduction of Shari’a, Muslims have no choice as to which jurisdiction will try them, whereas non-Muslims do. Furthermore, Muslims are likely to be affected negatively by some of the significant differences between the Shari’a and the common law systems. Some of the punishments provided for by the Shari’a legislation, for example death by stoning or amputation, are much harsher than those provided for in the Criminal Code. There are also certain acts, such as adultery, which are capital offenses under Shari’a but are not considered crimes under the Criminal Code applied in the rest of the country. As described above, several provisions of Shari’a also discriminate against women. The consequences of all these differences in terms of sentencing could be severe.

Separately from arguments about the limits of jurisdiction of the Shari’a courts, it is clear that punishments provided for by Shari’a, such as death by stoning, amputations, and floggings, are violating the right to dignity of the human person, enshrined in Section 34 of the constitution, which explicitly prohibits torture and inhuman or degrading treatment. Likewise, the failure of Shari’a court judges to observe due process during trials has violated the right to a fair hearing, provided for in Section 36 of the constitution. The inequality between men and women under Shari’a violates the right to freedom from discrimination, provided for in Section 42 of the constitution.

There has also been a more fundamental argument about the scope of the constitution and the extent to which it is binding across the country—even though the very first provision of the constitution states clearly that it is. Section 1 (1) states: “This

contained in the Second Schedule to the Constitution.) States have the powers to legislate in all remaining matters which are not contained in either of these two lists. For further discussion of the power of states in relation to Shari’a and the Nigerian Constitution, see Prof. Dr. Ruud Peters, “The Reintroduction of Islamic Criminal Law in Northern Nigeria,” a study conducted on behalf of the European Commission, September 2001.

Constitution is supreme and its provisions shall have binding force on all authorities and persons through the Federal Republic of Nigeria,” and Section 1 (3) states: “If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.” Some state government officials and judges in Shari’a courts have disregarded these provisions; they have argued that Shari’a has supremacy over the Nigerian constitution, because it has its source in religion, and have therefore claimed that they are not bound by constitutional requirements.

XIV. The federal government’s position on Shari’a

From the start, the federal government has adopted a passive attitude towards the introduction of Shari’a. Even at the height of controversy surrounding the issue, it has opted to look the other way, hoping the issue would eventually disappear. Some senior government officials have publicly voiced their personal opposition to certain aspects—in particular sentences of death by stoning—but have stopped short of intervening to prevent such sentences from being passed. They have instead relied on the appeal system, hoping that the courts of appeal would eventually acquit those facing harsh sentences—a lengthy process which only prolongs the psychological suffering of the defendants. Nor has the federal government insisted on changes to the legislation which provides for such punishments. It has continued to allow state governors complete autonomy in this respect, even when the Shari’a system was used to justify flagrant human rights violations. The federal government has also refrained from taking a position on whether the extension of Shari’a to criminal law is compatible with the Nigerian constitution. Instead, it has waited for a test case to challenge the issue through the federal courts—which, until now, has not been done. The federal government’s unwillingness to intervene can be explained principally by political considerations: in 1999, President Obasanjo, a Christian from the southwest of Nigeria, was elected in large part thanks to the northern, predominantly Muslim vote, and he remains unwilling to openly antagonize northern politicians or alienate public opinion in the north. The government may also feel that an open confrontation on this issue could trigger further bloodshed in the north or in mixed Muslim/Christian areas.

The pervasive negative publicity surrounding the cases of Safiya Hussein and Amina Lawal, combined with interventions and appeals by Western governments and institutions which Nigeria had counted as its political allies, clearly hit a raw nerve with President Obasanjo. Fearing the negative consequences for Nigeria’s international image, he made several public statements expressing his opposition to these sentences and stating that no one would be stoned to death in Nigeria. However, even these

statements were couched in passive language, as if he was in no position to take any action at all. Following the decision of the Upper Shari'a court to uphold Amina Lawal's death sentence, he told journalists: "I do sincerely hope that we will get through it, that Amina will not die [...] But if for any reason she is killed, I will weep for Amina and her family, I will weep for myself, and I will weep for Nigeria."²⁸⁰ He also stated: "There is nobody that has ever been stoned to death in our history and I hope that nobody will be stoned to death."²⁸¹

As international pressure intensified around Amina Lawal's trial, Minister of State for Foreign Affairs Dubem Onyia issued a press release on November 8, 2002, in which he stated: "The recent flurry of comments and interest within the International Community on the trial of Amina Lawal piques wholesomely the concern of the Nigerian government [...] The Nigerian government [...] shall not fold its arms while the rights of its citizens are abused [...] The Nigerian government shall exude its constitutional powers to thwart any negative ruling, which is deemed injurious to its people. We restate that no person shall be condemned to death by stoning in Nigeria. Safiyat and Amina Lawal will not be subjected to abuse of rights. The Nigerian government shall protect their rights"²⁸² He also told journalists: "Amina Lawal will never, never be stoned to death [...] The federal government will not stand by to let any citizen of this country be dehumanized."²⁸³ However, it is not clear what action the federal government took beyond these pronouncements; and government officials failed to acknowledge that the very trials of these women for adultery and the death sentences which were hanging over them were in themselves "dehumanizing."

President Obasanjo expressed relief when the death sentences of first Safiya Husseini then Amina Lawal were overturned by the Shari'a state courts of appeal. After Safiya Husseini won her appeal, he was quoted as saying: "Wherever I went in the world, I had no peace [...] [The President of Spain] said '... this matter of Safiya...' The second man was the Prime Minister of Norway. I had been talking to him about oil exploration in Nigeria. All he wanted to talk about was Safiya. I thank God and all those God has used to save the life of Safiya. Her stoning would have been a setback for us. No matter what we felt about this, the perception of the world would have been different [...] Nigerians must face the reality that the eyes of the world are on us."²⁸⁴

²⁸⁰ "Obasanjo expects judiciary to overturn stoning case," IRIN, August 28, 2002.

²⁸¹ "Obasanjo hopes Amina Lawal won't be stoned to death," Agence France-Presse, October 9, 2002.

²⁸² Press release signed by Hon. Dubem Onyia, Minister of State for Foreign Affairs, November 8, 2002.

²⁸³ See for example "Nigeria says won't allow any Shari'a stoning," Reuters, October 29, 2002.

²⁸⁴ "Safiya: Obasanjo lauds judgment, says death sentence was distraction," *The Guardian*, March 29, 2002.

Several sources reported that following the negative publicity generated by the cases of Safiya Husseini and Amina Lawal, the federal government put pressure on state governments, behind the scenes, to back away from such punishments. It is difficult to estimate how effective this pressure may have been. As mentioned above, some of the momentum which initially accompanied the introduction of Shari'a has been lost, but there are also other factors which may explain this shift. A number of Nigerian journalists, activists and other individuals based in northern states told Human Rights Watch that they were convinced that international pressure on the federal government—which filtered down to state governments—had had a significant impact in diminishing the likelihood of death sentences and amputations being carried out and on further such sentences being handed down.²⁸⁵

Other senior federal government officials, as well as members of the National Assembly, have also expressed their personal opposition to sentences of death by stoning. Bola Ige, who was Attorney General and Minister of Justice when Shari'a was first extended to criminal law in northern Nigeria, was among those who condemned these sentences.²⁸⁶ Members of the National Assembly also opposed the sentence, and the then-president of the Senate, Anyim Pius Anyim, deplored the “selective justice” which resulted in the conviction of Safiya Husseini, while the man with whom she had allegedly committed the adultery had been acquitted.²⁸⁷

In March 2002, the then Attorney General and Minister of Justice Kanu Agabi took the unusual step of writing to all the governors of the states applying Shari'a, urging them to amend the legislation. His letter, which was made public, referred first of all to “the hundreds of letters which I receive daily from all over the world protesting the discriminatory punishments now imposed by some Shari'a courts for certain offences. As a respected member of the world community, we cannot be indifferent to these protests.” He urged state governors to “take measures to amend or modify the jurisdiction of the courts imposing these punishments so that we do not in the end isolate either the country as a whole or the affected states.” However, his main argument for demanding amendments to the legislation was that Shari'a discriminates against Muslims and is therefore in breach of the Nigerian Constitution. Agabi's letter stated: “A Moslem should not be subjected to a punishment more severe than would be

²⁸⁵ Human Rights Watch interviews in various locations in northern Nigeria, July, August and December 2003.

²⁸⁶ Bola Ige was Attorney General and Minister of Justice until his assassination in December 2001. One of many politically-motivated killings in Nigeria, his death is not believed to have been linked to his position on Shari'a. For details, see Human Rights Watch briefing paper “Nigeria at the crossroads: human rights concerns in the pre-election period,” January 2003.

²⁸⁷ See for example “Sokoto adulteress appeals against death sentence,” *Daily Trust* (Abuja), November 5, 2001.

imposed on other Nigerians for the same offence. Equality before the law means that Moslems should not be discriminated against [...] A court which imposes discriminatory punishments is deliberately flouting the constitution.” He appealed to state governors “to take steps to secure modification of all criminal laws of your state so that the courts will not be obliged to impose punishments which derogate from the rights of Moslems under the Constitution.”²⁸⁸

Several state governors reacted negatively to this letter; others simply ignored it. Ahmed Sani, governor of Zamfara State, was among those who explicitly refused to comply with the attorney general’s request. He told journalists: “I wrote to tell the federal government that as far as Zamfara State is concerned, we have passed beyond the stage of dialogue on Shari’a. We have adopted Shari’a and Shari’a has come to stay.”²⁸⁹ The matter was not pursued further.

Following the April 2003 elections, a new Attorney General, Akinlolu Olujinmi, was appointed. When Human Rights Watch met him in August 2003, he shared our concerns about the human rights violations occurring in the implementation of Shari’a, particularly regarding the absence of defense lawyers. He agreed that there should always be legal representation in capital cases, and undertook to raise the issue with the state attorney generals. He also said that he believed some sentences were too severe and should not be applied. Regarding the question of the constitutionality of Shari’a, he said it was the responsibility of individuals who felt their rights had been violated to initiate a court case to challenge the application of Shari’a.²⁹⁰ His language indicated that the federal government was still reluctant to take action itself on this point. He explained that states were autonomous and expected very little intervention from the federal level. He claimed that when the northern state governments had introduced Shari’a, “it was difficult for the federal government to say ‘don’t do it’.”²⁹¹ When Human Rights Watch met the minister again in July 2004, he said that the state would provide a lawyer to anyone charged with a capital offense, and that judges should order a lawyer to take up any such case.²⁹²

²⁸⁸ Kanu Agabi’s letter to state governors, entitled “Prohibition of discriminatory punishments,” March 18, 2002.

²⁸⁹ “Agabi’s judgement day in Zamfara,” *Daily Champion*, April 29, 2002.

²⁹⁰ His predecessor, Kanu Agabi, had also argued that it was the responsibility of those whose rights had been violated to sue, and that the government could not go to court on their behalf. See “Why Federal Government will not test Shari’a in court, by Kanu Agabi,” *ThisDay*, June 27, 2002.

²⁹¹ Human Rights Watch interview with Minister of Justice and Attorney General Akinlolu Olujinmi, Abuja, August 8, 2003.

²⁹² Human Rights Watch interview with Minister of Justice and Attorney General Akinlolu Olujinmi, Abuja, July 2, 2004.

XV. Failure to conform to international human rights standards

As explained in this report, Human Rights Watch takes no position on the adoption of Shari'a or any other legal system as such. However, there are several aspects of Shari'a which contravene international and regional human rights standards, which the Nigerian government has ratified and which both federal and state governments are obliged to uphold. As stated above, some of the current practices carried out in the name of Shari'a also violate principles of Shari'a itself, as well as provisions within the Nigerian constitution.

Advocates of Shari'a in Nigeria, particularly some state government officials and Islamic leaders, as well as some Shari'a court judges, have dismissed these obligations, arguing that Islamic law has supremacy over both the Nigerian constitution and international standards, and that they are bound by neither. Some have voiced strong objections to attempts to hold them accountable to international standards, which they equate with secularity and Western values, and have sought to exploit the argument of cultural difference. They have described criticisms from the West as attacks against Islam and part of a campaign to impose Western values. For example, Nafiu Baba Ahmed, Secretary General of the Supreme Council for Shari'a in Nigeria, stated: "There is no universal value system. There are problems and misunderstandings because people are looking at it from a Western secular viewpoint. [...] Why should secular values be imposed? The rise of Islam today is challenging the universal system. There is no universal system [...] The introduction of Shari'a shows the yearning of the people. They are not happy with having a foreign system imposed on them."²⁹³ A hisbah leader in Kano told Human Rights Watch: "We have our own value system and religion. Just because the West doesn't agree, it doesn't mean it's wrong."²⁹⁴

On the other hand, several human rights organizations, activists, and academics in Nigeria have attempted to show that in fact, the human rights values enshrined in international conventions are compatible with Shari'a, and indeed overlap to a great extent. Debates and conferences have been organized and many papers written on these issues. As mentioned above, these points have also been integrated into some of the

²⁹³ Human Rights Watch interview with Nafiu Baba Ahmed, Secretary General of the Supreme Council for Shari'a in Nigeria, Kaduna, July 25, 2003. The Supreme Council for Shari'a in Nigeria was formed in around 2000 by a group of individuals who did not trust existing official bodies representing Muslims (such as the Jama'atu Nasril Islam and the Supreme Council for Islamic Affairs) to be sufficiently active in defending Shari'a.

²⁹⁴ Human Rights Watch interview, Kano, July 29, 2003.

training for Shari'a court judges and others. At the time of writing, active debates are still ongoing.²⁹⁵

Whatever personal beliefs may prevail in different social and religious circles in Nigeria, the Nigerian government—both at federal and state level—remains bound by international obligations and conventions. These are not conventions imposed by Western, Christian, or secular countries, but international and regional instruments which have been willingly ratified by Nigeria as well as other countries with large Muslim populations. The international conventions include the International Covenant on Civil and Political Rights (ICCPR), to which Nigeria has been a state party since 1993; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Nigeria ratified on June 28, 2001; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which Nigeria ratified on July 13, 1985; and the Convention on the Rights of the Child (CRC), which Nigeria ratified on April 19, 1991. The regional conventions include the African Charter on Human and Peoples' Rights (African Charter), which Nigeria ratified in 1983 and has incorporated into domestic law; its Protocol on the Rights of Women in Africa, which Nigeria signed on December 16, 2003, but has not yet ratified; and the African Charter on the Rights and Welfare of the Child (ACRWC), which Nigeria ratified on July 23, 2001.

The manner in which Shari'a has been applied in northern Nigeria so far has violated provisions of all these conventions, in particular on the right to life, the right to a fair hearing, the right to be free from torture and cruel, inhuman or degrading treatment, the right not to be discriminated against on the grounds of sex and religion, and the right to privacy.

The right to life

Article 6 (1) of the ICCPR states that “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” Article 4 of the African Charter also states: “Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.”

²⁹⁵ Some of the main issues arising in this context are articulated concisely in a report and communique from an International Conference on Shari'a Penal and Family Laws in Nigeria and in the Muslim World: A Rights based approach, organized by the International Human Rights Law Group, Abuja, August 5-7, 2003, Abuja.

In addition, Article 6 (2) of the ICCPR states: “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime [...] This penalty can only be carried out pursuant to a final judgement rendered by a competent court.”

The use of the death penalty under Shari’a has violated these provisions. In particular, consensual sexual relations between adults, for which people have been sentenced to death in Nigeria, cannot reasonably be considered as one of “the most serious crimes” referred to by the ICCPR.

The right to a fair hearing

Article 14 of the ICCPR states: “All persons shall be equal before the courts and tribunals [...] everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” It states that everyone shall be entitled to minimum guarantees including “(a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; [...] (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; [...] (g) not to be compelled to testify against himself or to confess guilt.” Article 7 of the African Charter states that “every individual shall have the right to have his cause heard” including “the right to defence, including the right to be defended by counsel of his choice.”

Children’s right to legal representation is specifically guaranteed in Article 37 (d) of the CRC and in Article 17 of the ACRWC.

The conduct of criminal trials in Shari’a courts, as indicated in this report, has violated these provisions in many respects, particularly regarding the right to legal representation, the right to be heard by a competent court, and the right of the accused not to be compelled to confess.

The right to be free from torture and cruel, inhuman or degrading treatment or punishment

The right to be free from torture and cruel, inhuman or degrading treatment is provided for in the ICCPR (Article 7), CAT, and the African Charter (Article 5).

In cases which have come before the Shari'a courts, these provisions have been violated in two respects. The systematic torture of suspects by the police to extract confessions clearly violates this right. In addition, punishments provided for in the Shari'a legislation, notably the death penalty, amputations, and floggings, constitute torture and cruel, inhuman or degrading treatment and fall within the definition of torture laid out in Article 1 of the CAT as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

Article 2 of CAT requires each state party to "take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction" – measures which state governments and the federal government in Nigeria have failed to take by allowing punishments such as amputations to be provided for in law and in practice.

With regard to corporal punishments, the U.N. Special Rapporteur on Torture has taken the view that "corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman and degrading treatment or punishment enshrined, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." Specifically in relation to corporal punishments contained in laws derived from religion, such as Shari'a, he stated: "As there is no exception envisaged in international human rights or humanitarian law for torturous acts that may be part of a scheme of corporal punishment, the Special Rapporteur must consider that those States

applying religious law are bound to do so in such a way as to avoid the application of pain-inducing acts of corporal punishment in practice.”²⁹⁶

The Convention on the Rights of the Child (Article 37) specifically states that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.” Section 17.3 of the U.N. Standard Minimum Rules for the Administration of Juvenile Justice state that “juveniles shall not be subject to corporal punishment.” Article 17 of the African Charter on the Rights and Welfare of the Child requires state parties to “ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment.” Yet several defendants sentenced to amputation or flogging by Shari’a courts in Nigeria have been under the age of eighteen.

The participation of doctors in amputations—as in the case of Jangebe in Zamfara State—goes against principles and guidelines set out by the U.N. and by international bodies representing the medical profession. The participation of doctors and other medical personnel in acts of torture or other cruel, inhuman or degrading treatment or punishment is prohibited by the Principles of Medical Ethics relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, adopted by the U.N. General Assembly on December 18, 1982. Principle 2 states: “It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment of punishment.”

Several international bodies representing medical professionals have also established guidelines and ethical principles against the participation of doctors in practices amounting to torture and cruel, inhuman or degrading treatment or punishment. The Declaration of Tokyo, adopted by the 29th Assembly of the World Medical Association in 1975, states: “The doctor shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offence of which the victim of such procedure is suspected, accused or guilty [...] The doctor shall not provide any premises, instruments, substances or knowledge to facilitate

²⁹⁶ Report of the Special Rapporteur on Torture, Commission on Human Rights, 53rd session, U.N. Doc. E/CN.4/1997/7. The document contains more detailed arguments against the use of corporal punishment under international human rights law and references to other decisions and opinions by U.N. human rights bodies.

the practice of torture or other forms of cruel, inhuman or degrading treatment [...] The doctor shall not be present during any procedure during which torture or other forms of cruel, inhuman or degrading treatment are used or threatened.”²⁹⁷

The right to equality before the law

The ICCPR states that men and women should enjoy equal access to all the civil and political rights set forth in the covenant. In particular, Article 26 states: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 3 of the African Charter states that “every individual shall be equal before the law” and “every individual shall be entitled to equal protection of the law.”

Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) commits state parties to pursue a policy of eliminating discrimination against women and ensuring equality of men and women in several ways, notably through adoption or amendment of legislation. In particular, Article 2 (f) commits state parties to taking “all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.” Article 15 of CEDAW requires all state parties to “accord to women equality with men before the law.” Article 5 (a) also requires state parties “to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”

Article 18 of the African Charter requires states to “ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.” The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, which was adopted in 2003, contains more detailed measures for protecting women’s rights, including the elimination of discrimination against women in law and in practice (Article 2) and access to justice and equal protection before the law (Article 8)

²⁹⁷ Guidelines for Medical Doctors concerning Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in relation to Detention and Imprisonment, adopted by the 29th World Medical Assembly, Tokyo, Japan, October 1975.

which requires state parties to ensure, among other things, “reform of existing discriminatory laws and practices in order to promote and protect the rights of women.”

Contrary to all these provisions, the Shari’a legislation in force in Nigeria is explicitly discriminatory on the grounds of religion—only Muslims are subjected to Shari’a and the harsh punishments contained in its legislation—and on the grounds of sex, with women facing serious disadvantages both in law and in practice, as illustrated in this report.

The right to privacy

The harassment of men and especially women in the context of private relationships, as well as public gatherings, has violated the right to privacy, as have attempts by the hisbah to catch people suspected of breaking the law or violating certain practices by entering their homes or prying on their activities. Article 17 of the ICCPR states: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence [...] Everyone has the right to the protect of the law against such interference or attacks.”

XVI. Conclusion

The future of Shari’a in Nigeria and the extent to which human rights safeguards are incorporated into the laws and practices will depend to a large extent on political developments in the coming period. There is an unspoken sense of relief, among Muslims and non-Muslims, that northern state governments have gradually backed away from the harsher aspects of Shari’a punishments, and that gross human rights violations in this context have decreased since the laws were first introduced. However, the issue should not be ignored, as the legislation providing for these punishments remains in place and fundamental abuses continue. A shift in the political situation could lead to tougher policies on the part of state governors at any time, should they feel the need to re-affirm their political security. The use of religion as a political tool has, if anything, increased in Nigeria over the last few years; appeals to religious sentiments in the context of continuing interethnic violence in Plateau State, Kano, and other parts of Nigeria in 2004 have further polarized communities and led to a hardening of positions.

Alongside efforts to resolve the broader political issues, government authorities should be looking for ways of ending human rights abuses under Shari’a. Many of these shorter-term solutions are within easy reach and do not require protracted political debates. As illustrated in this report, observance of due process in trials before Shari’a courts is one of the most critical issues. Failure to respect due process has led to serious

but preventable violations of human rights. The ultimate aim should be to amend the Shari'a legislation to exclude the death penalty, amputations, and floggings; however, until such amendments are adopted, all executions of death sentences, amputation and flogging sentences should be suspended. Respect for due process in the Shari'a system would also ensure that many such cases would not even reach the stage of conviction by the lower or upper Shari'a courts. In all the cases studied by Human Rights Watch, there were so many flaws and procedural errors in the judgments that the intervention of committed defense lawyers at an earlier stage would have ensured that none of these defendants were convicted, let alone sentenced to death or amputation. Competent legal representation from the initial stage and throughout the process is therefore critical, as illustrated by several cases in this report. Comprehensive training of judges would also contribute significantly to a reduction in the number of harsh sentences.

While urging government and judicial authorities in Nigeria to institutionalize respect for human rights within Shari'a, Human Rights Watch is also appealing to the Nigerian government to take measures to improve due process and human rights safeguards in other legal systems operating in parallel with Shari'a and in other parts of the country. Our research on human rights in the context of Shari'a has shown that some of the most serious abuses documented in this report—for example the extraction of confessions under torture by the police—are not peculiar to Shari'a and occur throughout Nigeria. Government officials urgently need to turn their attention to these broader problems which are undermining the course of justice in all the legal systems in operation in the country.

In addition to encouraging the Nigerian government to implement the recommendations above, foreign governments and other organizations and individuals concerned about the situation in Nigeria should recognize that many more people have been killed and injured in Nigeria in the context of inter-communal conflicts and killings by the security forces than as a result of Shari'a. The Nigerian government should be seeking to end this violence and ensure that the security forces protect the population in an effective way, without resorting to violence themselves.

XVII. Acknowledgements

This report was written by Carina Tertsakian, researcher in the Africa Division of Human Rights Watch, with contributions and comments from Albaqir Mukhtar, consultant, Hussaini Abdu of the Centre for Development Research and Advocacy (CEDRA), Kaduna, and Chinonye Obiagwu of Legal Defence and Assistance Project (LEDAP), Lagos. The research which forms the basis for this report was carried out by Carina Tertsakian, in conjunction with Albaqir Mukhtar, and Voke Ighorodje of Prisoners Rehabilitation and Welfare Action (PRAWA), Lagos. We are especially grateful to Albaqir Mukhtar for his contribution to the research and the report and for his advice on issues of Islamic law and human rights.

The report was edited by Binaifer Nowrojee, counsel in the Africa Division of Human Rights Watch; Tony Tate, researcher in the Children's Rights Division; LaShawn Jefferson, executive director of the Women's Rights Division; Joe Stork, advocacy director of the Middle East and North Africa division; Wilder Tayler, Legal and Policy director; and Widney Brown, deputy Program director.

We would like to thank the many individuals in Nigeria—too numerous to list here—as well as the human rights and women's organizations who contributed to our research and understanding of the issues by providing information, views and suggestions on the application of Shari'a in Nigeria.

We thank the John D. and Catherine T. MacArthur Foundation for their support for Human Rights Watch's work on Nigeria.