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**Islamic criminal law in northern Nigeria: politics, religion, judicial practice**

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## Chapter One: Judicial Practice in Islamic Criminal Law in Nigeria—A Tentative Overview<sup>9</sup>

Abstract: Uniquely, in Nigeria Islamic criminal law was introduced in the framework of a secular federal constitution. In 2000 and 2001, twelve northern states adopted legislation on the *ḥadd* offences and the Islamic law of homicide and bodily harm. Reliable statistics on the number of cases tried under the new laws are unavailable. Based on information from the media and human rights organisations, I present roughly 125 criminal cases tried before Nigerian *sharī'a* courts between 2000 and 2004. This sample shows that the *sharī'a* was particularly enforced in states dominated by the Hausa. In religiously mixed states, the bid to introduce the *sharī'a* became part of the religious groups' competition for hegemony and access to public resources, with violent consequences. The expectations which many Muslims attached to the introduction of the *sharī'a* were inflated. Its impact on the security of life and property, the fight against corruption and the promotion of good governance has probably been minimal.

In January 2000, the Northern Nigerian state of Zamfara enacted a *sharī'a* penal code<sup>10</sup> which “restored” the *ḥadd* offences<sup>11</sup> and their respective punishments as defined by Islamic tradition and the Islamic law of homicide and bodily harm. Within a short period of time, eleven northern states of the Nigerian federation followed the example of Zamfara. This act of legislation was preceded, accompanied and followed by a controversy in which all parties exhibited equal passion and anger. While supporters of the “re-introduction of the *sharī'a*” point to their

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<sup>9</sup> Originally published in *Islamic Law and Society*, 14:2 (2007), 240-86, and reprinted with permission of Brill Academic Publishers. Some minor errors of fact have been rectified.

<sup>10</sup> The spelling used in the code is “Shari’ah.” Except in quotations, I will use *sharī'a* throughout this book.

<sup>11</sup> The *ḥadd* (arab. lit. “border,” plural *ḥudūd*) offences and their punishments are mainly deduced from the Qur’ān and refined in the *sunna* or prophetic tradition. They are defined as infringements of the right of God (*ḥaqq Allāh*) towards man and prosecuted by public authorities, which in practice makes them comparable to criminal offences in Western legal terminology.

constitutional right to practice their religion,<sup>12</sup> opponents regard some punishments prescribed by the new codes, in particular stoning to death and amputation, as inhuman and degrading, and therefore unconstitutional.<sup>13</sup>

In September 2001, Zamfara State Governor Sani Ahmad Yerima, in an interview with the Nigerian daily *This Day*, described the adoption of the *sharī'a* by most states in northern Nigeria as politically motivated and intended to allow governors to be re-elected to office. The governor was quoted as saying that only Zamfara and, to some extent, Niger State adopted the *sharī'a* with purely religious intentions, whereas the other states were motivated by political expediency.<sup>14</sup>

The impression gained from the present overview of judicial practice in criminal trials before *sharī'a* courts in northern Nigeria is that the Zamfara State governor seems to be right insofar as many of his counterparts in other states were reluctant to follow Zamfara's example in introducing and implementing the *sharī'a*, in particular as refers to the *ḥadd* punishments. The political motivation for this reluctance is probably fear of the reaction of the international community and the Nigerian federal government, through which—we should not forget—the Nigerian oil revenues are channelled down to the states. In particular, governors belonging to the same political party as then Nigerian President Olusegun Obasanjo, the People's Democratic Party (PDP), such as Umaru Musa Yar'Adua of Katsina State, Rabi'u Musa Kwankwaso of Kano State, Abdulkadir Kure of Niger State, Ahmed Makarfi of Kaduna State, and Ahmadu Adamu Mu'azu of Bauchi State, found themselves caught between their loyalty to the federal government and the pressure mounted by Muslim lobby groups. As we will see, this dilemma seems to have led several of them to introduce Islamic criminal legislation without putting much effort into its implementation. Umaru Musa Yar'Adua of Katsina State was later nominated PDP's presidential candidate and emerged as the winner in the widely criticised April 2007 presidential polls.<sup>15</sup> Being governor of a "*sharī'a* state" did not harm his political career. The fact that Katsina has one of the highest numbers of reported *sharī'a* trials, shows,

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<sup>12</sup> Section 38 (1) of the 1999 Nigerian Constitution guarantees freedom of religion: "Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance."

<sup>13</sup> Section 34 (1) of the Constitution prohibits torture and inhuman treatment: "Every individual is entitled to respect for the dignity of his person, and accordingly—(a) no person shall be subject to torture or to inhuman or degrading treatment; [...]."

<sup>14</sup> "Sharia Was Politically Motivated - Ahmed Sani," *This Day*, 01/09/2001, 1 and 4.

<sup>15</sup> After a prolonged illness, President Yar'adua died on 5 May 2010 before the end of his first mandate. He was succeeded by his deputy, Goodluck Jonathan.

if anything, that the political leadership of the states is only one actor among others in the implementation of the *sharī'a*.

The motivation of the governor of Zamfara State to initiate a movement which was to propagate throughout northern Nigeria, however, can also be described in political terms. In the electoral campaigns of 1999 and 2003, he presented himself as the restorer of the *sharī'a*, comparing himself implicitly to the founder of the Sokoto Caliphate, Usman ḍan Fodio, who, in the beginning of the nineteenth century AD, united the independent Hausa city-states in what is generally referred to as the Sokoto *jihād*. In both elections, this strategy yielded the expected results. A similar strategy brought victory to Ibrahim Shekarau in Kano State in the 2003 gubernatorial election. After 2003, the topic rapidly lost prominence in the Nigerian public discourse. In the campaigns for the 2007 presidential and gubernatorial elections, the implementation of the *sharī'a* does not seem to have played any role.

The most prominent cases since the introduction of Islamic criminal law were those of Safiyya Hussaini of Sokoto State and Amina Lawal of Katsina State. Both women were convicted of *zinā* and sentenced to death by stoning, although the sentences were subsequently annulled on appeal. In fact, little is known about the true number of cases tried under Islamic criminal law in northern Nigeria or about regional differences in the application of Islamic criminal law on the state level. In this chapter I present available information on Islamic criminal law cases tried by *sharī'a* courts in northern Nigeria in the first five years after the enactment of the Zamfara *Sharī'a* Penal Code. After a short historical introduction and a description of the offences and punishments defined by the *sharī'a* penal codes, I will analyse the situation in particular states. The Nigerian situation is unique in that Islamic criminal law was introduced on a state level within the legal framework set by a secular federal constitution. Therefore, I seek to identify differences in the introduction and application of Islamic criminal law in the various states.

### ***Historical overview***

Many northern Nigerian Muslims regard the “re-introduction” of the criminal offences and their respective punishments as defined by traditional Islamic jurisprudence (*fiqh*), as a long-awaited step of decolonisation. Islamic law was applied in both criminal and personal matters in northern Nigeria until the advent of British colonial rule, which was established in the aftermath of Lord Lugard’s military victory over the Hausa-Fulani-dominated Sokoto Caliphate in 1902/03.<sup>16</sup> The British co-

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<sup>16</sup> For a summary of the history of the Sokoto Caliphate and the prominent role of Islam in it, see Hauck (2001: 98-108).

lonial authorities maintained the pre-colonial Islamic justice system, albeit under their supervision, curtailing the application of the law only in areas which they defined as repugnant to “natural justice, equity and good conscience.”<sup>17</sup> The British treated Islamic law as a system of customary law applicable to the native population, like customary law systems in other parts of Nigeria during the colonial period.

At independence in 1960, Nigeria became a federal republic composed of three autonomous entities, each dominated by one major ethnic group: the Yoruba in the Western Region; the Igbo in the Eastern Region; and the Hausa-Fulani in the Northern Region, which in itself accounts for more than half of the Nigerian population. While political life in the Northern Region is dominated by the Muslim Hausa-Fulani elite, the area also contains numerous ethnic minorities, in particular small, largely Christian ethnic groups living in the so-called Middle Belt in the southern part of the region, in addition to Muslim ethnic groups, such as the Kanuri in the north-east.

Since 1960, the Northern Region has been divided into ever smaller states on several occasions. By 1996, nineteen different states<sup>18</sup> and the Federal Capital Territory around the new capital Abuja shared the space previously occupied by the Northern Region. Within these new states, the ethnic and religious majorities have been redefined. Some states, such as Katsina, Kebbi, Jigawa, Sokoto and Zamfara, have an almost exclusively Muslim, mainly Hausa-Fulani population. Not surprisingly, the inhabitants of these states identify strongly with the historic model of the Sokoto Caliphate. The same applies in principle to Kano State even though large immigrant communities of different religious and ethnic background live in Kano metropolis, the economic centre of northern Nigeria. The north-eastern states of Borno and Yobe, which are dominated by the Muslim Kanuri, and Hausa-dominated Gombe<sup>19</sup> have important Muslim and non-Muslim minorities. In Niger State, the predominant group is the Muslim Nupe. The remaining ten successor states of the Northern Region are religiously and ethnically divided. Some of these states have been the scene of violent confrontations between supporters and opponents of Islamic criminal law following the adoption of the controversial legislation by Zamfara State. Islamic criminal law was introduced in Bauchi and Kaduna, where hundreds of people were killed in “*sharī'a* riots.” Neighbouring Plateau was also engulfed in violence, at

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<sup>17</sup> For the development of the application of the *sharī'a* in Nigeria, see Peters (2003: 5-12).

<sup>18</sup> These are Adamawa, Bauchi, Benue, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Nassarawa, Niger, Plateau, Sokoto, Taraba, Yobe, and Zamfara.

<sup>19</sup> In the previously published version of this article (Weimann 2007: 244 and 283), Gombe State is described as being dominated by the Kanuri ethnic group. This is incorrect. The majority of Gombe's population are Hausas.

least partly instigated by the introduction of Islamic criminal law in Bauchi.<sup>20</sup> However, Islamic criminal law was not introduced.

The British colonial authorities were aware of the threat to the country's unity posed by dissenting opinions about Islamic criminal law. Before Nigeria was granted independence in 1960, the colonial administration, in an attempt to accommodate the non-Muslim minorities living in northern Nigeria, brokered a compromise with the Muslim elite of the Northern Region which led to the adoption of the 1959 Penal Code for the Northern Region. This Penal Code was based on the Indian (1860) and the Sudanese (1899) Penal Codes, and was essentially an English code. However, here and there special provisions were included based on Islamic criminal law (Peters 2003: 12). The 1959 Penal Code was inherited by all nineteen successor states of the Northern Region.<sup>21</sup>

This compromise has been deemed insufficient by many Muslims in northern Nigeria. Every time the country has embarked on re-defining its constitutional order, Muslim delegates have attempted to strengthen the position of Islamic criminal law. The constituent assemblies of 1977, 1987 and 1994 were split over the issue of the *sharī'a*. However, in the view of the Nigerian scholar Kyari Mohammed (2002), it was the military, which has governed the country for most of its independence, that ultimately has prevented the status quo from being changed. He explains:

On all occasions the military government stopped the debate. The inability to [...] thrash out the shari'ah issue comprehensively may have made it an attractive campaign platform for politicians who do not have much to offer their constituents. The military by scuttling the debates, rather than allowing [them] to go to [their] logical conclusion, [has] contributed to making the shari'ah a hot potato.

After his victory in the 1999 gubernatorial elections, Zamfara State Governor Sani Ahmad began to act on his pre-election promise that he would “re-introduce the *sharī'a*.” This move may be seen as the abolition of a legal system that was imposed on northern Nigerian Muslims by the British colonial power. For many Muslims the slogan of “re-introducing the *sharī'a*” had become linked to the hope of building a just, equitable and democratic society. Muhammed Tabi'u (2004: 119), Professor of Law at Bayero University in Kano, explains that in “a gradual process of transformation and subjugation” the British colonial authorities in-

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<sup>20</sup> On the 2001 violence in Plateau State, see Human Rights Watch (2001).

<sup>21</sup> The laws of the original regions or states were continued in force in and became the laws of the new states carved out of them (Ostien 2006: 221-55).

tended to secularise the legal system in northern Nigeria, a process Muslims have tried to reverse since independence by “remov[ing] restrictions that impede the administration of the Shari’a.” He points out:

There was considerable expectation that a new legal order would ensue [from the restoration of Islamic criminal law] that would guarantee security for life and property, fight corruption and promote good governance, including better government commitment to the welfare of the people. The restoration of Shari’a was largely seen as a means of gaining access to much sought after but very elusive dividends of democracy.

This intention to restore the *shari’a* in northern Nigeria notwithstanding, the application of Islamic criminal law in twelve northern Nigerian states differs in important ways from the way in which it was administered in pre-colonial times. The 1999 Nigerian Constitution, while empowering states to introduce legislation on criminal matters,<sup>22</sup> demands that criminal offences and their punishments be specified in a written law enacted by the federal parliament or a state parliament.<sup>23</sup> To be applicable within the legal framework set by the Nigerian Constitution, Islamic criminal law therefore needed to be codified.<sup>24</sup>

Islamic criminal law was introduced in Zamfara and most other states by establishing *shari’a* courts competent to hear both civil and criminal cases involving Muslims and those non-Muslims who choose to be tried by them. At the same time, a corresponding legislation has been enacted, in particular a *shari’a* penal code that replaced the 1959 Penal Code for the Northern Region in the *shari’a* courts. Non-Muslims in these states continue to be tried by magistrate courts that apply the old Penal Code. In Niger State, the changes were introduced by amending the existing Penal Code. Here, the amendments have introduced additional

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<sup>22</sup> Criminal offences remain unmentioned both in Part I (Exclusive Legislative List of the Federal Government) and Part II (Concurrent Legislative List) of the Second Schedule (Legislative Powers) of the Nigerian Constitution. Thus, legislation on criminal offences is the sole responsibility of the states.

<sup>23</sup> Section 36 (12) of the 1999 Constitution: “Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.”

<sup>24</sup> In some states, cases of Islamic criminal law were tried and sentences executed even before a *shari’a* penal code came into force (see Peters 2003: 13). On the other hand, one important ground of appeal against the stoning sentence inflicted on Safiyya Hussaini was the retroactive application of the Sokoto State *Shari’a* Penal Code, since she had been arraigned before the bill was signed into law. It, therefore, appears that a continued application of uncodified Islamic criminal law would have been contested on constitutional grounds.

punishments applicable to Muslims with regard to offences like homicide, theft, adultery, defamation, intoxication, rape and causing bodily harm (Ladan 2004: 82f). As long as the Penal Code was the only criminal law applied in the nineteen successor states of the Northern Region there was, in essence, legal uniformity across the region. With the introduction of Islamic criminal legislation on the state level, however, this uniformity was compromised. Nevertheless, most differences between the codes are minor and concern the punishments defined for specific offences.

Codifying Islamic criminal law has changed the way in which justice is administered. Instead of relying on their knowledge of the classical works of Mālikī *fiqh*, the advice of the *‘ulamā* or Muslim scholars, and other instruments of Islamic law, judges in *sharī’a* courts are now required to base their judgments on the letter of the codes. Previously, most *sharī’a* judges exercised their profession in the former area courts, where they administered the *sharī’a* as an un-codified “customary” law in matters of personal and family law and applied the Penal Code in criminal matters. In the lower instances, in particular, they seem to have lacked the training and experience to implement the new codified legislation. Ruud Peters (2003: 17) reports from his 2001 field trip to Nigeria:

We heard many complaints that the changes [in the judiciary] were not properly introduced. The judges of the new Shari’a Courts were the same judges who had sat in the area courts, but they had not been prepared nor trained to apply the changes in the legal system. Ignorance of the law of procedure, we were told, seriously hampered the course of justice.

This fact, together with the absence of *sharī’a* criminal procedure codes in several states during the first years after the introduction of Islamic criminal law,<sup>25</sup> no doubt accounts for the high number of sentences under Islamic criminal law, in particular in the initial period, which ignored procedural guarantees and evidentiary restrictions defined by Mālikī law.

### ***Islamic criminal offences and punishments in Nigeria***

The *sharī’a* penal codes provide for offences and punishments applicable to Muslims and to non-Muslims who voluntarily consent to being tried before a *sharī’a* court (Ladan 2004: 80). The codes maintain the provisions of the 1959 Penal Code under the heading of *ta’zīr*, or discretionary punishment, to which are added chapters defining the *ḥadd* offences and the

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<sup>25</sup> Muhammad Tawfiq Ladan (2004: 82) mentions three states (Katsina, Borno, Bauchi) which by August 2003 had only draft bills of *sharī’a* criminal procedure codes.

Islamic law of homicide and bodily harm. In addition, the number of offences punishable by corporal punishments (caning or flogging) has been increased (Peters 2006: 223). The rules with regard to *ḥadd* offences largely follow the classical Mālikī doctrine (Peters 2003: 18; for a comparative analysis of the codes, see *ibid.*: 17-30).

*Zinā*, or unlawful sexual intercourse, is punishable by death by stoning, if the offender is currently married or has been married in the past. Otherwise the penalty is 100 lashes. In addition, men are imprisoned for one year. The same punishments are prescribed for rape, sodomy and incest, except that in cases of rape, the male offender is also required to pay the proper bride price (*ṣadāq al-mithl*).<sup>26</sup>

*Qadhf*, or false accusation of *zinā*, is punishable by eighty lashes.

*Shurb al-khamr*, or drinking alcohol or any intoxicant voluntarily, is punishable by eighty lashes, according to most codes.

*Sariqa*, or theft, is punishable by amputation of the right hand from the wrist for first offenders. The definition of *sariqa* respects many of the classical restrictions on the application of the *ḥadd* punishment for theft. In particular the stolen property must have a minimum value (*niṣāb*) and must have been kept in a safe place (*ḥirz*).<sup>27</sup> However, the codes fail to define the exact monetary value of the *niṣāb*. Some codes specify cases in which, in accordance with classical Mālikī law, the application of the penalty of amputation for theft is precluded (Peters 2003: 22).

The punishment for *ḥirāba*, or armed robbery, depends on the gravity of the damage caused. Most codes make it punishable by life imprisonment, if neither property nor life was taken; by amputation of the right hand and the left foot, if property was stolen; and by death, if murder was committed. Some codes prescribe crucifixion as punishment for armed robbery if property and lives were taken.<sup>28</sup>

The most important difference between the provisions regarding homicide and bodily harm found in the Islamic criminal codes and the classical Islamic doctrine is the fact that it is now the state prosecutor who brings the accused to trial, not the victim or the victim's next of

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<sup>26</sup> See, e.g., Zamfara State Sharī'a Penal Code, Section 129(c). The proper brideprice (also *mahr al-mithl*), which according to the classical doctrine is to be paid in cases of unlawful intercourse in which the woman is unmarried, is the average bride-price that a woman of the same age and social status would receive upon marriage in that region (Peters 2005: 59).

<sup>27</sup> Zamfara State Sharī'a Penal Code, Section 144: "The offence of Theft shall be deemed to have been committed by a person who covertly, dishonestly and without consent, takes any lawful and movable property belonging to another, out of its place of custody (*hirz*) and valued not less than the minimum stipulated value (*nisab*) without any justification."

<sup>28</sup> E.g., Zamfara State Sharī'a Penal Code, Section 153 (d). However, the punishment of crucifixion is not defined, which is a serious omission since the matter is controversial in classical Mālikī doctrine (Peters 2003: 24).

kin. However, the basic principle of retaliation (*qiṣāṣ*) is respected. This means that, once the court has convicted a defendant of intentional homicide, punishment can be death, if the victim's next of kin demand it. The method of execution is the same as that used by the offender on his victim. In cases of grievous bodily harm, the victim can demand retaliation, i.e. that the convict suffer the same injury as the victim. In most cases, the plaintiffs have the possibility to remit the *qiṣāṣ* punishment and accept monetary compensation (*diya*) instead.

If they remit both, the murderer receives a corporal punishment and/or imprisonment, depending on the *sharī'a* penal code applicable. In cases of unintentional homicide or wounding, the perpetrator must pay *diya*. The codes, however, do not clearly define the size of *diya*, setting it variously at "one thousand dinars, or twelve thousand dirhams or 100 camels."<sup>29</sup>

The chapter on *ta'zīr* of the *sharī'a* penal codes contains the same offences listed in the 1959 Penal Code. In particular, it includes provisions regarding offences committed by or relating to public servants.<sup>30</sup> In defiance of the classical doctrine, Kano State considers embezzlement of public funds a special form of *sariqa* which is punishable by amputation of the right hand and not less than five years' imprisonment.<sup>31</sup> These provisions aim at fighting the rampant corruption, an evil for which the introduction of Islamic criminal law promised to bring a rapid remedy.

Rudolph Peters (2003: 14) notes that the *sharī'a* penal codes seem to have been drafted in great haste, which "explains the poor legislative quality of the codes with lapses such as faulty, sometimes even incomprehensible wording, incorrect cross references, omissions and contradictions." After drafting the 2000 Zamfara Sharī'a Penal Code, the Centre for Islamic Legal Studies at Ahmadu Bello University in Zaria has produced both a Harmonised Sharī'a Penal Code and a Harmonised Sharī'a Criminal Procedure Code, which were submitted to the twelve northern Nigerian *sharī'a* states. At least Zamfara State has adopted the harmonised codes in late 2005.<sup>32</sup>

### ***Reporting on cases tried under Islamic criminal law***

To comprehensively assess Islamic criminal law court practice in northern Nigeria after the introduction of *sharī'a* penal codes, a broader foundation is needed than the few internationally known cases. Although

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<sup>29</sup> E.g. Zamfara State Sharī'a Penal Code, Section 59.

<sup>30</sup> E.g. Zamfara State Sharī'a Penal Code, Sections 288-304: "Offences by or Relating to Public Servants."

<sup>31</sup> Kano State Sharī'a Penal Code, Section 134B.

<sup>32</sup> Personal communication by Philip Ostien in April 2007.

official statistics on judicial cases in Nigeria remain unobtainable,<sup>33</sup> the relatively free and diverse Nigerian print media and reports by nongovernmental organisations are important sources of information on the judicial practice in criminal trials before *sharī'a* courts in Northern Nigeria. This valuable source of information calls for careful analysis: Nigerian journalists do not always have expert knowledge of Islamic criminal law, and most of the print media in Nigeria are based in the south and owned by either the *sharī'a*-hostile federal government or by non-Muslim private owners, most of whom are critical of the “*sharī'a* project of the north.” This is likely to impact on the way they report on cases under Islamic criminal law in the northern states. Nevertheless, the facts contained in these media reports can provide a general, albeit often enough incomplete, picture of the reported cases.

The present survey is based on news articles found in the Nigerian print media (or on their respective websites)<sup>34</sup> and a limited number of non-Nigerian news providers: BBC World News, Agence France Presse (AFP)<sup>35</sup> and the United Nations Integrated Regional Information Networks (IRIN).<sup>36</sup> This information is complemented by reports issued by non-governmental organisations (NGO), in particular Human Rights Watch (HRW) and the Lagos-based BAOBAB for Women’s Human Rights. The information retrieved often remains fragmentary. Frequently, the history and the final outcome of a case remain unknown. This is probably due to the thin media coverage of events taking place in northern Nigeria, in particular on the regional and local level. It may be assumed that the cases reported in the press represent only a small fraction of all criminal cases tried before *sharī'a* courts in northern Nigeria. In addition, many cases tried before *sharī'a* courts involved offences already defined in the 1959 Penal Code, which were taken up by the *sharī'a* penal codes under the heading of *ta’zīr*. As such, although technically trials under the new Islamic criminal codes, they did not constitute anything novel and, therefore, were not reported individually in the media.

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<sup>33</sup> The lack of official data has been repeatedly noted, e.g. Human Rights Watch (2004).

<sup>34</sup> Articles were mainly taken from the following Nigerian newspapers: *This Day* (Lagos, private), *Daily Trust* and its weekly counterpart *Weekly Trust* (Abuja, private), *The Guardian* (Lagos, private), *Vanguard* (Lagos, private), *New Nigerian Newspaper* (Kaduna, federal government). Articles, the references of which do not include page numbers, were retrieved from the Internet.

<sup>35</sup> I thank Rudolph Peters for putting at my disposal AFP reports from September 2000 to May 2002.

<sup>36</sup> These foreign news providers were chosen because they have their own network of correspondents on the ground and do not rely on media or news agencies whose information they might not be able to verify. IRIN, however, seems at times to rely on reports from other news providers.

The abovementioned NGOs report on some cases that are not mentioned in the media. Many of these cases come to the attention of these groups when their members or lawyers engaged by them visit prisons to talk to defendants in unrelated cases. It seems that many people are charged and imprisoned on remand while awaiting trial, or sentenced and kept in prison waiting for their sentence to be implemented, without the media taking notice of them. For certain types of cases, i.e. cases whose political sensitivity awakens the media's interest, it can be assumed that the picture drawn by the media is not too distant from reality. Case numbers should be reasonably reliable (a) in cases of *zinā*, or illicit sexual relations, at least those cases which have been appealed, because these trials have become the symbol, for *sharī'a* critics, of the incompatibility of Islamic criminal law and the individual rights guaranteed by the Nigerian constitution, and (b) in cases involving public servants and politicians, because the issue of corruption and the accountability of state representatives arouses great interest in the Nigerian media, irrespective of the *sharī'a* question.

### ***Regional distribution of cases***

Since the beginning of 2000, twelve northern Nigerian states have introduced new punishments for violations of Islamic criminal law.<sup>37</sup> In this section, I will give a tentative overview of how this new legislation was introduced and applied on the state level between 2000 and 2004. In three states (Borno, Gombe, Yobe), no court cases under Islamic criminal law were reported during this period.<sup>38</sup> From Niger, Kaduna, and Kebbi only two, three, and eight cases respectively were reported in this period. This means that almost 90% of the roughly 125 cases identified<sup>39</sup> took place in six of the twelve states, i.e. Bauchi, Jigawa, Kano, Katsina,

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<sup>37</sup> On the introduction of the new codes and changes in the judiciary, see Peters (2003: 13f) and Ladan (2004).

<sup>38</sup> This finding was confirmed to me by Philip Ostien in a personal communication in May 2006.

<sup>39</sup> The exact number of cases is not entirely clear because in some instances the reports do not specify if prison inmates were tried summarily or separately. The problem of the number of trials has led to some inconsistencies between the different chapters. In the overview provided in the appendix, I specify 137 cases, as opposed to 125 in this chapter, published as Weimann (2007). Here, I only considered cases between 2000 and 2004 reported in the media or by NGOs with explicit reference to a court trial. Excluded were trials after 2004 and prison inmates mentioned by NGOs without explicit reference to a trial in court. In later chapters, I found that these limitations unnecessarily restricted the number of cases in specific crime areas, in particular with regard to theft. Therefore, I decided to include also cases after 2004 and all prison inmates mentioned by NGOs. The change in methodology does not affect my conclusions, since these are not based on a statistical analysis. The trials described only serve as an illustration of judicial practice.

Sokoto, and Zamfara. The last three states alone account for 60% of all cases.

The general trend for all states except Bauchi is that the highest number of new cases reported is found shortly after the introduction of the respective Islamic criminal code. Over time, the number of cases reported decreases, until 2004, when no more than seven cases were reported, two in Zamfara and five in Bauchi. One explanation for this trend is that the attention paid to Islamic criminal law by the media has decreased over time. However, developments in the application of Islamic criminal law seem to be subject to dynamics on the state level. In order to demonstrate how judicial practice in Islamic criminal law is shaped by the particular circumstances in individual states, I will outline in brief the nature of Islamic criminal cases reported from each of the twelve “*sharī'a* states,” beginning with Zamfara and proceeding from there to predominantly Muslim states in the north-west, then in the north-east of the country. Finally, the religiously mixed states of Kaduna and Bauchi will be discussed.

### **Zamfara**

As the first state of the Nigerian federation, Zamfara put into force a new Islamic criminal code on 27 January 2000, although *sharī'a* courts had been established earlier (Peters 2003: 13). In 2003, Zamfara State reportedly enacted a law establishing a state-controlled *sharī'a* enforcement group, or *hisba*, responsible for arresting violators of *sharī'a* regulations and handing them over to police (Garba 2006).

The pioneer state of Islamic criminal law in Nigeria accounts for roughly one-third of all cases, i.e. forty of the approximately 125 cases identified in this survey. Of these forty cases, sixteen were brought before a *sharī'a* court in 2000, six in 2001, seven in 2002, nine in 2003 and two in 2004. This number, however, is probably only the tip of the iceberg. According to a press report, 5,287 criminal cases were treated by *sharī'a* courts in Zamfara in 2002 alone.<sup>40</sup>

The most frequent indictment in the Zamfara cases is *sariqa* (theft), with eleven cases involving thirteen defendants.<sup>41</sup> In none of the re-

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<sup>40</sup> “Sharia implementation: Are Muslims better off?”, *Weekly Trust*, 18-24/01/2003, 1-2. The article does not specify the source of this information.

<sup>41</sup> These are the cases of Buba Bello Jangebe (amputation sentence in February 2000); Kabiru Salisu (sentenced in September 2000); Musa Gummi (amputation sentence in September 2000); Lawali “Inchi Tara” Isah (amputation sentence in December 2000); Lawali Dan Mango Dadin (amputation sentence in April 2001); Musa Shu’aibu (amputation sentence in September 2001); Abdullahi Abubakar (amputation sentence) and Mustapha Ibrahim (February 2002); Ibrahim Sulaiman (amputation sentence in January 2003); Abubakar Yusuf (amputation sentence in April 2003); Sirajo Mohammed (amputa-

ported cases was the defendant acquitted. Eleven defendants were sentenced to amputation. Only two defendants were reported to have received another form of punishment.<sup>42</sup> Two amputation sentences, handed down in 2000 and 2001, were carried out. These were the cases of Buba Bello Jangebe, sentenced in February 2000, amputated on 22 March 2000; and Lawali “Inchi Tara” Isah, sentenced in December 2000, amputated on 3 May 2001. After these two amputations, the state governor seemed reluctant to approve further amputations. Persons sentenced to amputation remained in prison. In June 2003, seven persons were reported awaiting amputation.<sup>43</sup> Human Rights Watch (2004: 39) gives the figure for early 2004 as twelve.

The only indictment for bodily harm in Zamfara State was reported as early as February 2000. A *sharī'a* court in the state capital Gusau ordered Dantanim Tsafe to pay 157,933.70 Naira (1,500 US\$)<sup>44</sup> for knocking out his wife’s teeth in a quarrel. The media reports do not specify who would receive the money. Section 59 of the Zamfara State Sharī'a Penal Code stipulates that *diya* is to be paid to the victim. However, one report mentions that Tsafe’s wife pleaded for the “fine” to be set aside, as her husband was incapable of paying. The judge then reduced the fine to 50,000 Naira (470 US\$).<sup>45</sup> If unable to pay, Tsafe would have to “submit his teeth for forceful removal.” As Peters (2003: 28) points out, the *sharī'a* penal codes, unlike classical doctrine, regard *diya* as a punishment, not as compensation for a civil liability. In the present case, this confusion may have been at the root of the wife’s plea for a compensation to be set aside which she was entitled to receive.

With regard to *zinā* and related offences, no stoning sentence was reported from Zamfara between 2000 and 2004. The defendants in four *zinā* cases involving six persons,<sup>46</sup> one case of sodomy<sup>47</sup> and one of rape<sup>48</sup> all

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tion sentence in April 2003); and Abubakar Lawali and Lawali Na Umma (both sentenced to amputation in May 2003).

<sup>42</sup> On 22 September 2000, Kabiru Sule was sentenced to six months in prison and 50 strokes of the cane for stealing a shirt valued 400 Naira (4 US\$). See “Two men flogged publicly in Nigeria for drinking, stealing,” AFP, 25/09/2000. Probably, the value of the stolen good was not regarded exceeding the *niṣāb*. In February 2002, Mustapha Ibrahim was sentenced to six months in prison and thirty lashes, while his accomplice Abdullah Abubakar received an amputation sentence (Human Rights Watch 2004: 56).

<sup>43</sup> “Sharia: Seven on Wrist Amputation List,” *This Day*, 19/06/2003; and “Kano Sharia court orders amputation of two men for theft,” *The Guardian* (Nigeria), 24/06/2003, 3.

<sup>44</sup> Conversion of Nigerian Naira amounts into US\$ throughout this book is approximate, based on the contemporary exchange rate.

<sup>45</sup> “Zamfara amputation: Raising the stakes of Sharia implementation,” *The Guardian* (Nigeria), 29/02/2000, 8. See also “Sharia: Farmer fined N158,000 for beating wife,” *The Comet*, 15/02/2000, print edition.

<sup>46</sup> These were Zuweira Aliyu and Sani Mamman (February 2000); Bariya Ibrahim Maguza (September 2000); Amina Abdullahi (August 2001); Zuwayra Shinkafi and Sani Yahaya

received corporal punishments. Four *qadhif* cases ended in corporal punishment for five defendants.<sup>49</sup> In one case, it is not clear if the defendant was indicted.<sup>50</sup>

Other cases dealt with immoral behaviour, problems between co-wives, and criminal trespass.<sup>51</sup> Apparently, all defendants in these cases received corporal punishments. In September 2000, militant Islamic preacher Muhammadu Sani Julijoka was indicted for inciting violence and sentenced to one year in prison after he urged people to protest against the “lenient way” in which the *sharī'a* is implemented in the state.<sup>52</sup>

Two further cases of interest in Zamfara State involved public servants. In November 2001, State House of Assembly Member Abdulsalami Ahmed Asha was indicted for selling his official car.<sup>53</sup> In October 2003, four members of the governor’s re-election campaign committee were accused of diverting 374 motorcycles meant for the state’s poverty alleviation programme.<sup>54</sup> No sentence has been reported in either case.

In addition to the *sharī'a* penal code, the Zamfara government enacted legislation designed to impose Islamic conduct. In August 2000, 200 commercial motorcycle riders were arrested for carrying women under a newly passed law prohibiting the transport of passengers of the opposite sex on one motorcycle, if driver and passenger are not married. At

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(March 2003). However, it cannot be excluded that this last case is identical with the first one. With exception of the year stated by HRW, there are striking similarities not only in the names but also in the facts reported.

<sup>47</sup> Abdullahi Abubakar Barkeji (February 2002).

<sup>48</sup> Tukur Aliyu (October 2003).

<sup>49</sup> An unidentified jealous husband (June 2000); Aishat and Haruna Dutsi (September 2000); Gado Maradun (2000); Ibrahim Na-Wurno (April 2001).

<sup>50</sup> In January 2004, Hafsi Bakura, chairperson of the ANPP governing party in Zamfara State, was reported to court for having accused the ANPP chairperson in Gusau Local Government Area of extramarital relations. It is unclear if the tribunal admitted the complaint for trial. See “ANPP chieftains in Sharia court for alleged adultery,” *Daily Independent*, 05/01/2004.

<sup>51</sup> Garuba Bagobiri-Ungumar and Muhammadu Danige, accused of gambling (September 2000); Nagogo Kakumi, accused of marrying more than four wives (November 2001; however, it is unclear if this was treated as criminal case); Hawa Yahaya, Umar Garba and Yaro, accused of conspiracy to robbery (February 2002); Luba Mainasara, accused of beating her fellow wife with a pestle (April 2002); four accused of criminal trespass (January 2003); Shafaiatu Tukur, accused of burning down her fellow wife’s home (September 2003); and a wedding party comprising eight individuals, accused of immoral acts (December 2004).

<sup>52</sup> “Islamic scholar jailed for preaching violence in Nigeria,” AFP, 28/09/2000.

<sup>53</sup> “Sharia court orders amputation of hands, legs in Sokoto,” *The Guardian* (Nigeria), 20/12/2001, print edition.

<sup>54</sup> “Sharia: Zamfara gov’s campaign manager docked over theft,” *Daily Independent*, 31/10/2003.

least two men, identified as Jafaru Isa and Maniru Abdullahi, were sentenced to twenty lashes.<sup>55</sup>

It seems that corporal punishments are carried out on a daily basis in the state. Human Rights Watch (2004: 58), relying on information provided by local sources in August 2003, reports that “floggings sometimes took place twenty times a week.” In light of this, the five court cases for *shurb al-khamr* (consumption of alcohol) must be considered a small fraction of the real figure.<sup>56</sup>

Even though *ridda* (apostasy) is not defined as a crime in any of the *sharī'a* penal codes in force in northern Nigeria, in a case reported from Zamfara State two former Muslims who allegedly converted to Christianity were brought before a *sharī'a* court in April 2002. The case was dismissed (Human Rights Watch 2004: 82). This is the only case involving an accusation of *ridda* reported in Nigeria in the period under review.

### **Katsina**

Under strong pressure from pro-*sharī'a* activists,<sup>57</sup> the Katsina State Government, then headed by Umaru Musa Yar'Adua (PDP), enacted a law establishing *sharī'a* courts which commenced adjudicating on *sharī'a*-related matters on 1 August 2000. Pressure on the government to implement the *sharī'a* seems to have been maintained thereafter. Repeatedly, an independent committee on the implementation of the *sharī'a*, headed by Aminu Maigari, accused the government of impeding the implementation of the *sharī'a* in the state and threatened it with creating chaos if it failed to carry out the wish of the people.<sup>58</sup> Among the accusations levelled against the state government was the allegation that it issued a directive to the *sharī'a* courts not to accept any more cases brought before them by independent, i.e. not state-controlled, *sharī'a* monitoring groups (*hisba*).<sup>59</sup> Indeed, implementation of Islamic law does not appear to have been a priority for the state government. A prominent member of the state's official *sharī'a* commission alleged in July 2003 that of eighty-six judges who were heading the state's *sharī'a* courts, only two were competent.<sup>60</sup> Despite this reluctance, Katsina has

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<sup>55</sup> “Sharia beating for motorcyclists,” BBC News, 10/08/2000.

<sup>56</sup> Dahiru Sule (February 2000); Hassan Umoru (September 2000); Lawali Jekada (September 2000); *sharī'a* court judge Muhammadu Na'ila (January 2001); Garba Aliyu (July 2003).

<sup>57</sup> “Katsina begins Sharia on August 1,” *The Guardian* (Nigeria), 08/07/2000, 3.

<sup>58</sup> “Sharia: Katsina Muslims Accuse Governor of Paying Lip service to Implementation,” *This Day*, 30/03/2001; and “Committee accuses Katsina govt of sabotaging Sharia,” *Vanguard*, 01/08/2001, 10.

<sup>59</sup> “Sharia implementation in Katsina, the journey so far,” *Weekly Trust*, 26/07-01/08/2003, 8. To my knowledge, Katsina State has not adopted legislation on the creation of a state-controlled *hisba*.

<sup>60</sup> *Ibid.*

one of the highest numbers of reported trials. Of seventeen criminal cases brought before the *sharī'a* courts until the end of 2004, three were initiated between August and the end of 2000, nine took place in 2001, and three each took place in 2002 and 2003. By contrast, in January 2003, a press report stated that 7,491 cases under Islamic criminal law had been handled by the *sharī'a* courts in Katsina State.<sup>61</sup> However, the report does not specify the period of time during which the trials had taken place.

The Katsina State *Sharī'a* Penal Code was promulgated in August 2001.<sup>62</sup> Previously, several local government areas had put into force by-laws prohibiting the sale and consumption of alcoholic beverages, prostitution and related matters. Thus, it is not always possible to determine the legal basis of the sentence pronounced in cases reported from the state prior to the enactment of the *sharī'a* penal code. Nevertheless, serious offences such as theft, bodily harm and *zinā* are exclusively defined by the *sharī'a* penal code. At least four cases involving one of these offences were tried by *sharī'a* courts in the state before codified Islamic criminal law was in place.<sup>63</sup>

Two cases tried in Katsina State attracted widespread attention. The first was the death sentence against Sani Yakubu Rodi for homicide in November 2001. Rodi was convicted of brutally stabbing to death the wife of a high-ranking security officer and their two children while attempting to rob their house. The victims' next of kin demanded retaliation (*qiṣās*), and the court therefore ruled that Rodi should be stabbed to death with the same knife used in his crime.<sup>64</sup> The method of execution was later changed, reportedly to avert riots.<sup>65</sup> He was hanged on 3 January 2001. This is the only publicly acknowledged execution in Nigeria since the transition to a civilian government in May 1999. It is also the only reported execution pronounced under Islamic criminal law in the period under review.

The second internationally known case was the one of Amina Lawal Kurami, who, after giving birth to an illegitimate baby in November 2001, was sentenced to death by stoning for *zinā* in March 2002 on the

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<sup>61</sup> "Sharia implementation: Are Muslims better off?" *Weekly Trust*, 18-24/01/2003, 1-2.

<sup>62</sup> "State-related materials acquired by state as of 4 April 2003" (henceforth SIDP), unpublished list of official reports related to Islamic criminal law and Islamic criminal legislation collected by the Shari'a Implementation Documentation Project of Jos (Nigeria) and Bayreuth (Germany) Universities.

<sup>63</sup> These are Nasiru Abba, accused of theft (August 2000); Attine Tanko and Lawal Sada, accused of *zinā* (November 2000); Isiyaku Sanni and Suleman Abdullahi, accused of theft (January 2001); and Ahmed Tijjani, accused of bodily harm (May 2001).

<sup>64</sup> "Sharia court sentences man to death by knifing," *The Guardian* (Nigeria), 15/11/2001, print edition.

<sup>65</sup> "First Nigerian executed under Sharia laws," BBC News, 04/01/2002.

basis of her confession.<sup>66</sup> The man she said was responsible for her pregnancy, Yahaya Mohammed, was acquitted after swearing by the Qur'an that he was not the father of the child.<sup>67</sup> The first appeal against the verdict failed in August 2002, when the court did not accept Lawal's withdrawal of her confession. However, a second appeal, before the Katsina Sharī'a Court of Appeal, resulted in quashing the death sentence. By a majority of four to one, the judges agreed that the two lower courts made a mistake of law by failing to carry out a proper investigation into the allegations against Lawal. Instead, the judges pointed out, "the prosecution of the case, when it began, was based on rumour."<sup>68</sup> The appeals court accepted Lawal's withdrawal of her confession. It also accepted the argument that there was a possibility for the child to be fathered by her former husband due to a delayed pregnancy ("sleeping embryo").<sup>69</sup> The presiding judge was quoted as saying that, although Amina previously had acknowledged the charge, it was clear that she was misled into confessing her guilt.<sup>70</sup> Lawal had not been told about the gravity of the punishment for the offence.

The remaining fifteen cases reported from the state received considerably less media coverage. In another *qisāṣ* case in May 2001, the victim asked for the removal of Ahmed Tijjani's right eye in retaliation for the loss of his own eye in a fight with the defendant. The judge ruled that Tijjani should have either one of his eyes removed or pay a compensation of 50 camels.<sup>71</sup> The plaintiff insisted on retaliation.<sup>72</sup> The execution of the sentence was not reported.

Regarding sex crimes, in addition to the case of Amina Lawal, one more *zinā* case was reported. In November 2000, Attine Tanko and Lawal Sada were sentenced to corporal punishment in combination, for the

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<sup>66</sup> According to one source ("... As another woman gets stoning sentence in Katsina," *The Triumph*, 26/03/2002), the case had been before the court of first instance for at least ten months before judgment was passed. In this case, she must have been brought before the court while still pregnant. Another report ("Nigerian woman who faced stoning to death is acquitted," AFP, 25/03/2002) claims Lawal was arrested by people of her village of Kurami on 4 March 2002.

<sup>67</sup> "Sharia: Woman to Die by Stoning," *This Day*, 20/08/2002, 1 and 6.

<sup>68</sup> "Sharia court quashes sentence, frees Amina Lawal," *The Guardian* (Nigeria), 26/09/2003.

<sup>69</sup> In Mālikī law, a pregnancy can last up to a maximum of five to seven years, depending on the source. The claim by the defendant that her pregnancy goes back to a former husband produces *shubha*, which in itself should be enough for the *ḥadd* punishment not to be applicable (Peters 2006: 236f).

<sup>70</sup> "Adultery: Sharia Appeal Court frees Amina," *New Nigerian Newspaper*, 26/09/2003, 1 and 2.

<sup>71</sup> "In Katsina, it's an eye for an eye," *The Guardian* (Nigeria), 26/05/2001, 1 and 2.

<sup>72</sup> "Plaintiff asks Nigerian Islamic court to pluck out a man's eye," AFP, 26/05/2001.

male defendant, with a prison term.<sup>73</sup> In January 2003, Ibrahim Ayuba and Mohammed Ibrahim were indicted for rape of a 3.5 and a 4-year-old girl, respectively.<sup>74</sup> No sentence was reported.

Four cases of *sariqa* involving seven defendants were reported, one per year between 2000 and 2003.<sup>75</sup> Six of the defendants were sentenced to amputation of the right hand, and no sentence has been reported for the remaining defendant. No execution of an amputation sentence was reported from the state.

In three trials, a total of five men reportedly were convicted of drinking alcohol and given between eighty and ninety lashes.<sup>76</sup> Here again, it can be assumed that the real figure is higher. One man was flogged and jailed for indecent behaviour in 2003,<sup>77</sup> whereas in September 2002 seven women were given 15 strokes of the cane each in Funtua for “loitering.” They had been accused of being prostitutes.<sup>78</sup>

Initially, the government-appointed Katsina State Sharī'a Commission had banned public musical performances as un-Islamic. In fact, two court cases against musicians were reported in April 2001. In Funtua, Dauda Maroki and Gambo Maibishi, two traditional Hausa praise singers, were given ten strokes of the cane in public.<sup>79</sup> In the second case, traditional Hausa musician Sirajo Ashanlenle was pardoned after he promised never to play at weddings again.<sup>80</sup> In August 2001, however, the Sharī'a Commission lifted the ban on performing music. The commission directed “that singing and drumming [are] desirable at wedding, Id

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<sup>73</sup> “Second teen mum in Nigeria awaits flogging for pre-marital sex,” AFP, 11/01/2001.

<sup>74</sup> “Two Charged with Raping Minors,” *This Day*, 27/01/2003.

<sup>75</sup> Nasiru Abba (August 2000); Isiyaku Sanni and Suleman Abdullahi (amputation sentences in January 2001); two bull thieves (amputation sentences in 2002, reportedly appealed); and Abubakar Sani and Masaudu Ibrahim (amputation sentences in October 2003).

<sup>76</sup> Sule Sale (August 2000); Umaru Bube (March 2001). Kabiru Yusuf, Salisu Danjuma and Rabiu Mohammed were sentenced to eighty lashes each for drinking alcohol in contravention of a Funtua bye-law in May 2001. Three other men were discharged and acquitted from the same offence. See “3 old men receive 80 lashes each for consuming alcohol,” *Vanguard*, 12/05/2001, 2.

<sup>77</sup> In June 2003, Abdu Rabe was found guilty of having entered in a female students' hostel, where he indecently touched a student. He was sentenced to two years' imprisonment and 20 strokes of the cane. See “Sharia court jails 45-yr-old man,” *Daily Trust*, 24/06/2003, print edition.

<sup>78</sup> “Kebbi sacks Sharia court judge over financial scam,” *The Guardian* (Nigeria), 10/09/2002, print edition.

<sup>79</sup> “Sharia strokes for musicians,” *The Comet*, 24/04/2001, print edition; and “Sharia: Musicians Caned for Playing at Wedding,” *This Day*, 27/04/2001.

<sup>80</sup> *Ibid.*

prayers and circumcision ceremonies, and [can] also take place during wars or while welcoming a fellow Moslem from a trip.”<sup>81</sup>

In the only reported case of public officers being tried for abuse of authority, two policemen received 100 strokes of the cane in Funtua in 2001 following their conviction by a *sharī'a* court for illegal confiscation of petrol from fuel vendors.<sup>82</sup>

## Sokoto

The legal basis for *sharī'a* courts in Sokoto State was created in February 2000 with the promulgation of the Sharī'a Courts Law.<sup>83</sup> These courts commenced their activities on 2 August 2000 (Peters 2003: 58). The Sokoto State Sharī'a Penal Code came into force on 31 January 2001 (ibid.: 53). Fifteen trials reportedly took place in 2001 and four in 2002. Here again, the identified cases appear to be only a small fraction of the total number of cases.<sup>84</sup>

The Sokoto State Government was criticised for not giving statutory backing to a *sharī'a* enforcement group or *ḥisba*. In an interview with the Nigerian weekly *Weekly Trust* in July 2003, the director of a local Islamic organisation said that the government's failure to introduce a state-controlled *ḥisba* weakened the administration of the *sharī'a*. He added that there was a “group that is ‘flogging’ those who commit adultery or [are] found drinking alcohol,” but this was insufficient.<sup>85</sup>

As in Zamfara, the indictment most frequently found in Sokoto State is *sariqa*. Seven cases involving eight defendants indicted for theft and one accomplice led to four amputation sentences.<sup>86</sup> One of the amputation sentences was executed: the right hand of Umaru Aliyu, sentenced in April 2001, was amputated in July 2001. Three defendants were sen-

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<sup>81</sup> “Katsina Sharia panel okays singing, drumming,” *The Guardian* (Nigeria), 10/08/2001, print edition.

<sup>82</sup> “Sharia court orders amputation of hands, legs in Sokoto,” *The Guardian* (Nigeria), 20/12/2001, print edition.

<sup>83</sup> See SIDP.

<sup>84</sup> “In Sokoto, between May 2000 and September 2002, a total of 1,262 criminal cases was received out of which 1,024 have been disposed of with 248 pending” (“Sharia implementation: Are Muslims better off?” *Weekly Trust*, 18-24/01/2003, 1-2). The article does not specify the source of this information.

<sup>85</sup> “Poor sharia monitoring in Sokoto - Sheikh Isah,” *Weekly Trust*, 26/07-01/08/2003, 7.

<sup>86</sup> Lawali Bello and Sani Mohammed (April 2001); Umaru Aliyu (amputation sentence in April 2001); Lawali Garba (amputation sentence in July 2001); Mohammed Ali (November 2001); Aminu Bello (amputation) and his accomplice Salisu Abdullahi (December 2001); Bello Garba (amputation sentence in January 2002); and Mustapha Abubakar (August 2002). An appeal was filed at least for the amputation sentences of Aminu Bello and Bello Garba. In the case of Mustapha Abubakar, the sentence has not been reported.

tenced to imprisonment and corporal punishment because the value of the stolen goods did not exceed the *niṣāb*.<sup>87</sup>

Two more amputation sentences were pronounced in connection with the only *ḥirāba* (armed robbery) case reported from northern Nigeria between 2000 and 2004. The two defendants, Garba Dandare and Sani Shehu, were charged with stealing goods and cash. In December 2001, they were sentenced to have their right hand and left foot amputated.<sup>88</sup> They declared they would not appeal the judgment. The execution of the sentence has not been reported. Apart from these cases, many more unreported amputation sentences seem to have been pronounced in the state. As early as December 2002, twelve people were in jail awaiting amputation.<sup>89</sup> Human Rights Watch (2004: 57) mentions around ten prisoners awaiting amputation in Sokoto prison in 2003, the majority of whom were under the age of eighteen.

Of the six identified *zinā* cases in the state, which involved eight defendants,<sup>90</sup> the most prominent was the trial of Safiyya Yakubu Hussaini, a divorcee who was indicted in October 2001 after being found pregnant out of wedlock.<sup>91</sup> Yakubu Abubakar, who she claimed was the father of her child, was acquitted due to lack of evidence.<sup>92</sup> Hussaini was sentenced to death by stoning on the strength of her confession, which she withdrew on appeal. The defence then argued that a child may be attributed to a woman's former husband for seven years after the divorce, and that the alleged offence had taken place before the enactment of the *sharī'a* penal code. In March 2002, Hussaini was discharged and acquitted on procedural grounds. This was the only stoning-to-death sentence reported from the state.

Another noteworthy *zinā* trial was that of Abubakar Aliyu in July 2001. He was indicted for committing adultery with a mentally deranged

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<sup>87</sup> Mohammed Ali, Lawali Bello and Sani Mohammed.

<sup>88</sup> "2 robbers face amputation in Sokoto," *Daily Trust*, 20/12/2001, 1; and "Sharia court orders amputation of hands, legs in Sokoto," *The Guardian* (Nigeria), 20/12/2001, print edition.

<sup>89</sup> "Eyewitness: Nigeria's Sharia amputees," BBC News, 19/12/2002.

<sup>90</sup> Hawa'u Garba and Hussaini Mamman (June 2001); Abubakar Aliyu (July 2001); Safiyya Yakubu Hussaini and Yakubu Abubakar (October 2001); Aisha Musa (2001); Hafsatu Abubakar and Umaru Shehu (January 2002); and Maryam Abubakar Bodinga (October 2002). The trials of Hafsatu Abubakar and Umaru Shehu, as well as Maryam Abubakar Bodingo ended with the defendants being discharged and acquitted. Aisha Musa filed an appeal after being sentenced to corporal punishment. For Hawa'u Garba and Hussaini Mamman, no sentence was reported.

<sup>91</sup> For a detailed discussion of this case, see Peters (2006).

<sup>92</sup> A confession allegedly made to police, in which he admitted having sexual relations with Hussaini, was dismissed by the judge "because, under Sharia law, four witnesses are required in a case of this nature" ("Nigerian appeals Sharia sentence," BBC News, 19/10/2001).

woman and sentenced to 100 strokes of the cane in addition to one year's imprisonment.<sup>93</sup> No mention is made of the woman's fate. According to Islamic law, an insane person has no criminal responsibility, making this one of the rare *zinā* trials in which only the man is indicted. After 2002, no new cases of *zinā* or a related offence were reported. But this does not necessarily reflect the reality: in January 2002, a number of young nursing mothers were being kept in Sokoto prison.<sup>94</sup> It is likely that some of these women were imprisoned, with or without trial, after they gave birth to children out of wedlock.

One indictment of a single defendant for *shurb al-khamr* was reported in April 2001,<sup>95</sup> and one trial of smoking Marihuana involving four Muslims was reported in July 2001.<sup>96</sup> All defendants were punished with lashing. As in other states, this is probably just the tip of the iceberg.

Another case tried in a *sharī'a* court involved a man accused of selling carrion.<sup>97</sup> Mohammed Jobi and Issa Abdullahi, two officials of the state's branch of the National Orientation Agency, were accused of embezzling the cash gratuity meant for a man who was about to retire. They were sentenced in August 2001 to corporal punishment and fine, in one of the few successful trials of public servants under the *sharī'a* legal system.<sup>98</sup>

Finally, Emmanuel Oye and Femi Lasisi, born Christians, reportedly insisted that they be tried before a *sharī'a* court. They had been charged with "idleness" and "belonging to a group of thieves."<sup>99</sup> Possibly, they reckoned that the punishment awaiting them under Islamic criminal law would be less severe than under the secular Penal Code.

## Jigawa

In Jigawa State, the *sharī'a* courts took up their activities on 2 August 2000. A *sharī'a* penal code was submitted by the state government to the State House of Assembly as early as 27 November 2000.<sup>100</sup> However, the law was only enacted on 18 December 2001.<sup>101</sup>

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<sup>93</sup> "Man Sentenced for Committing Adultery with Lunatic," *This Day*, 14/07/2001.

<sup>94</sup> "Hafsatu still in detention, says counsel," *The Guardian* (Nigeria), 17/01/2002, print edition.

<sup>95</sup> Umar Mohammed. See "Two Kids Share 40 Lashes for Goat Theft," *This Day*, 25/04/2001.

<sup>96</sup> "Sharia Court Convicts Two Christians," *This Day*, 01/08/2001.

<sup>97</sup> Sani Mamman (July 2001). See "Sharia Court Jails Man for Selling Dead Animal's Meat," *This Day*, 20/07/2001, 5.

<sup>98</sup> "Nigeria civil servants flogged under Sharia," BBC News, 15/08/2001; and "NOA Director, Accountant Get 80 Lashes for Cheating," *This Day*, 17/08/2001.

<sup>99</sup> "Sharia Court Convicts Two Christians," *This Day*, 01/08/2001.

<sup>100</sup> "Panel Submits Sharia Legal Code to Jigawa Assembly," *Post Express*, 28/11/2000, 4.

<sup>101</sup> See SIDP.

A total of ten cases tried in *sharī'a* courts until the end of 2004 have been reported: two in 2001, eight in 2002 and one in 2003. By contrast, the state's Chief Judge, Justice Tijjani Abubakar, announced that, in the legal year 2002, 3,144 criminal cases<sup>102</sup> and, in the legal year 2004, 4,642 criminal cases had been tried in the state, most of which were handled by *sharī'a* courts.<sup>103</sup> These figures, even if they are exaggerated, indicate that a very large number of criminal cases tried in *sharī'a* courts remain unreported.

There were four indictments for intoxication: five persons, among them the only woman convicted of the offence, were sentenced to eighty strokes each, all in 2002.<sup>104</sup> In one case, the Emir of Dutse stripped the culprit, Abdulkadir Garba, of his traditional title of Sarkin Fulani for being a bad example to the people.<sup>105</sup> In another case, Abba Bashir, son of a senior member of the Dutse Emirate Council, was flogged twice for drunkenness by the same *sharī'a* court in December 2002 and January 2003. In response to this, the emirate council accused the local *hisba* group of publicising the case with the intent to embarrass the emirate. After relations worsened, the emirate council dissolved the executive committee of the *hisba* and set up a commission to select a new one.<sup>106</sup> Another traditional ruler, Abba Ajiya, was found guilty of living with a woman to whom he was not married. In November 2001, he, his companion and an accomplice were sentenced to 40 strokes of the cane and one year's imprisonment.<sup>107</sup>

Umaru Musa and Usman Shehu were brought before a *sharī'a* court in the only indictment for *sariqa* identified in Jigawa State. The trial started in March 2002, but no sentence has been reported.<sup>108</sup>

The trial which received the greatest media attention in Jigawa State was the case of Sarimu Muhammad of Baranda village. In May 2002, he was sentenced to death by stoning for raping a nine-year-old girl. After a prolonged appeal, he was acquitted in August 2003 on grounds of insan-

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<sup>102</sup> "Jigawa sets up c'ttee to review courts' performance," *Daily Trust*, 13/01/2003, 18. Furthermore, on page 2 of its 18-24 January 2003 edition, *Weekly Trust* mentions, without specifying a period of time, 2,858 cases under Islamic criminal law registered in Jigawa State, of which 2,575 had been treated.

<sup>103</sup> "Jigawa Justice Reforms Cottee Gets N46.6m Counterpart Funding," *This Day*, 02/10/2004.

<sup>104</sup> Bello Abdulkadir (February 2002); Abdulkadir Garba (September 2002); Abdulsalam Garba and his girl friend Ladi Muhammad (September 2002); and Abba Bashir (on two counts in December 2002 and January 2003).

<sup>105</sup> "Village Head, Tutor, Girlfriend Caned 240 Lashes," *This Day*, 25/09/2002.

<sup>106</sup> "Emirate Council Dissolves Sharia Committee," *This Day*, 21/02/2003.

<sup>107</sup> "Sharia: FG, Sokoto Fight Over Safiya," *This Day*, 18/11/2001, 1 and 4.

<sup>108</sup> "Sharia court adjourns for suspects to reconsider confession," *Daily Trust*, 27/03/2002, print edition.

ity.<sup>109</sup> In September 2002, while Babaji's trial was still pending, five men who were accused of raping an eleven-year-old girl were sentenced to five months in prison.<sup>110</sup> In November 2003, twenty-year-old Umaru Zurena was indicted for incest after raping and impregnating his seventeen-year-old niece.<sup>111</sup> No sentence has been reported. Already in August 2001, Yunusa Yargaba was charged with attempted rape of a blind woman and sentenced to 100 strokes of the cane.<sup>112</sup>

In April 2004, a criminal suit against the governor of Jigawa State, Saminu Turaki, over the disbursement of a 30 billion Naira allocation (150 million US\$) to local governments in the state was dismissed by a *sharī'a* court in Dutse for formal defects.<sup>113</sup> The judge, however, stated that the immunity of the governor, as guaranteed by Section 308 (3) of the 1999 Nigerian Constitution, is not applicable in *sharī'a* courts.

The conflict between the local *hisba* and the emirate council was created by the Jigawa State government's approach to *sharī'a* implementation.<sup>114</sup> Supporters of the state government's position responded to allegations of lack of resolve with the argument that Jigawa had opted for a gradual introduction of the *sharī'a*, focussing in an initial phase on the collection and distribution of *zakāt*, or religiously proscribed alms, and education.<sup>115</sup>

## **Kebbi**

Kebbi State introduced a *sharī'a* penal code, which entered into force beginning on 1 December 2000 (Peters 2003: 58). As in other states, in the initial phase after the introduction of Islamic criminal law, public floggings seem to have been used to change public behaviour. Relying on local sources, Human Rights Watch (2004: 58) reports that after the introduction of Islamic criminal law in Kebbi State, floggings took place on average once a week in the state capital of Birnin Kebbi. By the end of 2003, the number had decreased to one per month. Sometimes these floggings seem to have taken the character of mass trials, such as, e.g., in Gwandu Local Government Area, where in June 2001 "no fewer than 107 prostitutes" were given twenty lashes of the cane each, on the orders of

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<sup>109</sup> "Sharia: Stoning Verdict on Alleged Rapist Quashed," *This Day*, 20/08/2003, 4.

<sup>110</sup> "For rape, sharia court passes death, fines others," *The Guardian* (Nigeria), 03/09/2002, 7.

<sup>111</sup> "Man, 20, in court for impregnating niece," *Weekly Trust*, 22/11/2003.

<sup>112</sup> "Man to Get 100 Lashes for Attempted Rape," *This Day*, 27/08/2001.

<sup>113</sup> "No Immunity Under Sharia, Says Court," *This Day*, 29/04/2004, 1 and 4.

<sup>114</sup> "Jigawa: Effective Zakkat system, poor sharia implementation," *Weekly Trust*, 26/07-01/08/2003, 7.

<sup>115</sup> *Ibid.*

a *sharī'a* court in Gwandu, for idleness and wandering.<sup>116</sup> In 2003 the only identified trial for intoxication, which led to the flogging of the culprit in Birnin Kebbi (Human Rights Watch 2004: 61), is surely only one of a much higher number of cases.

Apart from public order issues, a small number of important cases have been reported from Kebbi State. After having been indicted for sodomy, Attahiru Umar was sentenced to death by stoning in September 2001 for sexual abuse of a seven-year-old boy.<sup>117</sup> However, the execution of the sentence has not been reported. Human Rights Watch (2004: 40) mentions a total of five cases of *sariqa* brought before a *sharī'a* court in the state between July 2001 and November 2002.<sup>118</sup> Six alleged thieves were sentenced to amputation, while two accomplices were flogged and jailed. The authors of the report found the convicts in prison in December 2003, awaiting the execution of their sentences.

One case in Kebbi State deserves particular attention: in 2002, Yahaya Kakali was sentenced to amputation of the right hand for theft.<sup>119</sup> After a first appeal was rejected, a second appeal was filed on his behalf at the Federal Court of Appeal in Kaduna, making Kakale's case the first in Nigeria to reach the level of federal courts. This could open the way for probing the constitutionality of the state's Islamic criminal legislation before the Nigerian Supreme Court. But the Nigerian print media has essentially ignored this case, despite its precedential potential.

## Kano

Kano, the capital of Kano State, is the most populous city and the economic centre of northern Nigeria. It has a large non-Muslim population. Kano State started implementing Islamic criminal law beginning on 26 November 2000, or 1 Ramadan 1421 AH, only one day after the Sharī'a Courts Law and the Sharī'a Penal Code were put into force.<sup>120</sup>

The state government was accused of yielding to public pressure and not being sincere about the implementation of the *sharī'a*. The government insisted that the implementation of the *sharī'a* in Kano must be

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<sup>116</sup> "107 prostitutes, 20 gamblers caned in Kebbi," *Vanguard*, 16/06/2001, 3.

<sup>117</sup> "Obasanjo visits Zamfara, cautions on Sharia," *The Guardian* (Nigeria), 14/09/2001, print edition; "Sharia Court Sentences Man to Death by Stoning," *This Day*, 14/09/2001; and "Nigerian sentenced to stoning," BBC News, 14/09/2001.

<sup>118</sup> Abubakar Aliyu (amputation sentence) and two accomplices (July 2001); Altine Mohammed (amputation sentence in July 2001); Abubakar Mohammed (amputation sentence in September 2001); Bello Mohammed and Mohammed Mansir (amputation sentences in November 2001); and Abubakar Hamid (amputation sentence in October 2002).

<sup>119</sup> In Weimann (2007: 267), I described Kakale's offence as armed robbery (*hirāba*). It is more likely that the charge was theft (*sariqa*), as the sentence reported was amputation of the right hand. The punishment for *hirāba* would have been cross-amputation.

<sup>120</sup> See SIDP.

gradual due to the cosmopolitan makeup of the population.<sup>121</sup> In defiance of a standing statutory *sharī'a* implementation committee, Islamic scholars favourable to the full implementation of the *sharī'a* set up an independent *sharī'a* implementation committee, which in turn established a *ḥisba* group charged with ensuring compliance with Islamic injunctions in the state. On several occasions, this religious non-governmental body clashed with police forces.<sup>122</sup> In 2003, no doubt in response to this escalation, Kano State enacted a law establishing a state-controlled *ḥisba* board (Garba 2006).

The topic of *sharī'a* implementation dominated the electoral campaign that preceded the 19 April 2003 gubernatorial elections. Governor Rabi'u Musa Kwankwaso, a member of PDP, lost in the polls and was succeeded by Ibrahim Shekarau of the All Nigerian People's Party (ANPP). Shekarau's main pre-election promise had been to implement the *sharī'a* effectively in the state. The fact that the only three cases of sex crimes reported from the state took place after the change in government may not be unconnected to this power change. Be it as it may, the global figures of cases under Islamic criminal law in Kano are not significantly different from other states: mass trials against alleged prostitutes and their clients took place following the enactment of Islamic criminal legislation. In one instance, more than forty-five women were apprehended by police in late 2000 and subsequently arraigned before *sharī'a* courts for prostitution.<sup>123</sup> In January 2001, police reportedly arrested sixty people, including eleven suspected prostitutes. One of the women arrested died in prison, another gave birth in detention while awaiting trial. At the end of the trial, ten women were sentenced to two weeks' imprisonment, while twenty-six men received one month's imprisonment for participating in an "immoral gathering."<sup>124</sup>

Human Rights Watch (2004: 37) reports that, at the end of 2003, floggings were carried out in Kano State at an average of three cases a month, most of them cases of alcohol consumption. But only three trials for *shurb al-khamr* were identified over the five-year period. In July 2000, i.e. four months before the *Sharī'a* Penal Code entered into force, Nasiru Mohammed was sentenced to flogging and imprisonment for "drunkenness and intentional insult of an innocent citizen under the influence of

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<sup>121</sup> "Two years of Sharia in Kano: Shekarau's Humanist Approach," *Weekly Trust*, 26/07-01/08/2003, 4.

<sup>122</sup> *Ibid.*

<sup>123</sup> "45 Prostitutes Face Kano Sharia Courts," *Post Express*, 16/12/2000, 94.

<sup>124</sup> "Sharia Court Jails 10 Women in Kano," *This Day*, 16/02/2001; and "Sharia: Suspected prostitute dies in detention," *The Guardian* (Nigeria), 17/02/2001, 48.

alcohol.”<sup>125</sup> Three other men convicted of intoxication were reportedly flogged.<sup>126</sup>

Three sex crimes cases have been identified in Kano State in 2003 and 2004 respectively. In one case, Hafsatu Idris stated to the police that she had been raped by Ahmadu Haruna. When they appeared in court in May 2004, the police report accused her, together with Ahmadu Haruna, of committing *zinā*. The state’s attorney-general was to assume her defence in court, but a sentence has not been reported.<sup>127</sup> In August 2003, Hamisu Suleiman was convicted of rape and sentenced to eighteen months’ imprisonment with the option of a fine, for being a first-time offender.<sup>128</sup> Also in 2003, the alleged rape of a four-year-old girl by Saminu Abbas was interpreted by the court as “gross indecency.”<sup>129</sup>

The most frequent indictment reported from Kano State, however, is *sariqa*. At least seven court cases involving ten defendants have been identified, two in 2001, three in 2002, and two in 2003, i.e. after the change in government.<sup>130</sup> Nine amputation sentences were handed down. Appeals were filed against a minimum of four amputation sentences.<sup>131</sup> While none of the sentences has been annulled, a number of convicts were released on bail after spending some time in prison (see, e.g., Human Rights Watch 2004: 40). In December 2003, eighteen alleged cattle thieves were put on trial, seven of whom were remanded in prison custody, but no sentence was reported.<sup>132</sup>

## Niger

Niger State announced the introduction of the *sharīa* for mid-January 2000.<sup>133</sup> Niger State did not introduce a new *sharīa* penal code but amended the existing Penal Code to include punishments for offences

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<sup>125</sup> “Kano man to get 80 strokes for drinking alcohol,” *The Guardian* (Nigeria), 05/07/2000, print edition.

<sup>126</sup> Nuhu Abdullahi and Sa’adu Aminu (January 2001); and Mudansiru Abdulmumini (June 2003).

<sup>127</sup> “Rape victim’s father accuses police of changing FIR,” *Daily Trust*, 24/03/2004, 29.

<sup>128</sup> “Rape suspect bags 18 months jail term,” *Daily Trust*, 21/08/2003, 23.

<sup>129</sup> “Man in Sharia court for raping 4-year-old girl,” *Daily Trust*, 26/05/2003, 23.

<sup>130</sup> A certain Adamu (indicted in January 2001); Danladi Dahiru (amputation sentence in August 2001); Abubakar Mohammed and Mohammed Bala (amputation sentences in January 2002); Ali Liman, Aminu Ahmed, and Haruna Musa (amputation sentences in January and February 2002); Haruna Bayero (amputation sentence in April 2002); and Hassan Ibrahim and Hamza Abdullahi (amputation sentences in June 2003).

<sup>131</sup> These are the sentences of Haruna Bayero, Mohammed Bala, Hassan Ibrahim and Hamza Abdullahi.

<sup>132</sup> “Cattle rustlers arraigned before Sharia court,” *Daily Trust*, 10/12/2003.

<sup>133</sup> “Niger opts for modified Sharia,” *The Guardian* (Nigeria), 22/12/1999, print edition.

under Islamic criminal law applicable to Muslims. The amendments to the Penal Code became enforceable on 4 May 2000 (Peters 2003: 52).

As in other states, when Islamic criminal legislation was first introduced public floggings were frequent. Human Rights Watch (2004: 58f), relying on a local source, mentions the figure of ten to a maximum of twenty floggings per month in Niger State in 2000 and early 2001. By mid-2003, their number had declined to one or two per month.

One trial of a rape case was reported in November 2002: Aminu Ruwa was sentenced to 100 lashes and required to pay the medical bill of the six-year-old girl with whom he had forceful intercourse.<sup>134</sup> The report does not mention whether or not the defendant was required to pay the proper bride price (*ṣadāq al-mithl*) to the victim.

Niger State has been in the focus of attention for one particular *zinā* trial: in August 2002, Fatima Usman and Ahmadu Ibrahim were sentenced to imprisonment with the option of a fine, on the basis of the old version of the Penal Code. Three weeks later, this sentence was changed into stoning to death without retrial, even without informing the defendants, who were already serving their prison terms. The change was in line with the amended Penal Code. An appeal against the sentence was still pending in 2004 (Human Rights Watch 2004: 25). There are indications that more death sentences for *zinā* offences were pronounced in Niger State than reported.<sup>135</sup>

## Yobe

In Yobe, the *sharī'a* became enforceable beginning on 1 October 2000. At that date, however, *sharī'a* courts had not taken up their activities.<sup>136</sup> A *sharī'a* penal code was only assented to by the governor on 9 March 2001.<sup>137</sup>

In June 2000, Yobe State Governor Bukar Abba Ibrahim (ANPP) announced that he would introduce a version of the *sharī'a* acceptable to both Muslims and Christians.<sup>138</sup> In an interview with the Nigerian news magazine *Tell*, a special assistant to the governor said that the *sharī'a* is purely a religious affair that does not affect non-Muslims in the state.<sup>139</sup> No case under Islamic criminal law has been identified during the period under review.

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<sup>134</sup> "Man gets 100 strokes for indecency," *The Comet*, 20/11/2002, 6.

<sup>135</sup> Philip Ostien estimates that there are four or five cases of death sentences for illegal intercourse in Niger State (personal communication in May 2006).

<sup>136</sup> "Sharia Without Tears," *Tell*, 30/10/2000, 37.

<sup>137</sup> See SIDP.

<sup>138</sup> "Yobe plans modified Sharia," *The Comet*, 06/06/2000, 7.

<sup>139</sup> "Sharia Without Tears," *Tell*, 30/10/2000, 37.

## Borno

In Borno State, the “adoption of the *sharīʿa*” was announced on 1 June 2001.<sup>140</sup> This date apparently marked the beginning of enforcement of a law prohibiting prostitution, lesbianism, homosexuality and the operation of brothels, which was signed by Governor Mala Kachallah on 10 December 2000.<sup>141</sup> However, the draft Borno State *Sharīʿa* Penal Code 2000 was signed into law only on 3 March 2003.<sup>142</sup>

In April 2001, the Borno State Committee for the Implementation of *Sharīʿa* recommended a “gradual and multi-dimensional approach to the implementation” of the Islamic criminal legislation.<sup>143</sup> This statement, together with the lengthy legislative process, betrays a general reluctance on the part of the government of this state in the north-eastern corner of Nigeria to follow the example set by the north-western states, such as Zamfara, Katsina, or Sokoto. The sources available to me do not mention any court case tried under Islamic criminal law in the state. Philip Ostien, reader in Law at the University of Jos (Nigeria), confirmed to me that in Borno State the Islamic criminal legislation has remained a dead letter.<sup>144</sup>

Borno, alongside Kano, was one of two northern Nigerian states which changed government as a result of the 19 April 2003 gubernatorial elections. The transfer of power from Mala Kachallah, who left the ANPP and joined the Alliance for Democracy (AD) in late 2002, to Ali Modu Sherrif (ANPP), however, apparently did not have any effect on the implementation of Islamic criminal law. In stark contrast to Kano State, where the *sharīʿa* was the predominant topic of the 2003 electoral campaign, it was hardly an issue in Borno State.

## Gombe

As the last of the twelve “*sharīʿa* states,” Gombe put into force legislation establishing *sharīʿa* and customary courts on 14 December 2001.<sup>145</sup> In late 2001, a *sharīʿa* penal code law and a customary code law were enacted to complement the existing Penal Code (Ladan 2004: 76). By providing for a tripartite legal system consisting of *sharīʿa* courts, customary courts and magistrate courts, the state government sought to ease the apprehensions of non-Muslims about an alleged attempt to Islamise the state, a solution conceived earlier in Kaduna (see below). In fact, the introduc-

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<sup>140</sup> “Borno adopts Sharia today,” *The Guardian* (Nigeria), 01/06/2001, 64.

<sup>141</sup> See SIDP.

<sup>142</sup> Information gratefully received from Philip Ostien in August 2006.

<sup>143</sup> “Sharia implementation takes off in Borno June 1,” *Daily Times*, 10/04/2001, print edition.

<sup>144</sup> Personal communication, May 2006.

<sup>145</sup> “Gombe Adopts Sharia at Last,” *This Day*, 18/12/2001.

tion of Islamic criminal legislation was controversial in Gombe State. As other states in Northern Nigeria enacted *sharī'a* penal codes, tensions between Muslims and Christians were mounting, at times culminating in violent confrontations. In September 2000, ten people were killed in inter-religious clashes in the state.<sup>146</sup> In May 2001, 25 people were injured after a group of Muslims confronted three Christians who were carrying a picket bearing the words “No Sharia.”<sup>147</sup>

Between 2002 and 2004, no court case under Islamic criminal law was reported from the state. Gombe State Governor Abubakar Habu Hashidu (ANPP) tried to resist pressure from Muslim activists to introduce Islamic criminal law in the first place,<sup>148</sup> and it is reasonable to assume that he did not make it a priority of his government after its enactment. In the 19 April 2003 gubernatorial elections, Hashidu lost his post to the PDP candidate Mohammed Danjuma Goje, but this does not seem to have changed the government’s attitude towards the *sharī'a*.

## Kaduna

Kaduna embarked on the implementation of Islamic law on 2 November 2001,<sup>149</sup> twenty-one months after Zamfara State started the process. On this date, the newly constituted *sharī'a* and customary courts commenced their activities, but a *sharī'a* penal code was promulgated only in June 2002.<sup>150</sup> The late enactment of Islamic criminal law in Kaduna State was a consequence of the so-called *sharī'a* riots in late February 2000, when in response to the introduction of Islamic criminal law in Zamfara State a wave of religious violence engulfed Kaduna metropolis and environs.<sup>151</sup>

Kaduna State contains a mixture of Muslims and non-Muslims. The north, where the university town of Zaria is the regional centre, is predominantly Muslim, whereas Christians make up the majority of the population in the south. Kaduna metropolis was founded by the British colonial power, which established its administrative and military headquarters in the new settlement in 1917. As a result, no ethnic or religious group in the city can claim “indigeneity.”<sup>152</sup> The city is said to be almost evenly split between Christians and Muslims. Other regions in northern Nigeria are clearly dominated by the Muslim majority of the population,

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<sup>146</sup> “Religious clashes in Nigeria kill ten,” BBC News, 09/09/2000.

<sup>147</sup> “NIGERIA: Religious clash in Gombe State,” IRIN, 23/05/2001.

<sup>148</sup> “Gombe Adopts Sharia at Last,” *This Day*, 18/12/2001.

<sup>149</sup> “Uneasy Calm as Kaduna Implements Sharia,” *This Day*, 03/11/2001.

<sup>150</sup> See SIDP.

<sup>151</sup> “Uneasy Calm as Kaduna Implements Sharia,” *This Day*, 03/11/2001.

<sup>152</sup> For the importance of the word pair “indigenous”—“settler” in the Nigerian context, see International Crisis Group (2006: 24).

whereas the mainly non-indigenous non-Muslim communities accept their minority status. In “neutral” Kaduna, by contrast, inter-religious violence has been a frequent occurrence over the last decades.<sup>153</sup> As a result of this explosive situation, the implementation of Islamic criminal law in Kaduna State has taken a different form from other “*sharīa* states.” After State House of Assembly Members from the southern (mainly non-Muslim) part of the state threatened to secede if Islamic criminal law were to be implemented across the state, the state government proposed a tripartite court system to accommodate all sections of the population.<sup>154</sup> Area courts were abolished. They were replaced by customary courts in predominantly non-Muslim areas, and by *sharīa* courts in predominantly Muslim areas. The magistrate courts continued to exist. In the mixed parts of Kaduna city and other principal towns, the implementation of any form of religious laws was explicitly foreclosed.<sup>155</sup>

Only a small number of court cases tried under Islamic criminal law were reported in the three years following the introduction of the *sharīa*. In November 2003, the state’s Grand Qāḍī announced that two men, convicted by a *sharīa* court in Zaria, were to have their right hand amputated soon.<sup>156</sup> Between August and September 2003, the Zaria Upper *Sharīa* Court convicted six men charged with “shop lifting, thefts of provisions, textile materials, a cow and a motorcycle and house breaking”<sup>157</sup> and sentenced them to amputation of the right hand. After one year in prison waiting for their judgments to be signed by the governor, their cases were made public by human rights activists, who claimed that the convicts had been tried and sentenced in one day and were not given the opportunity to engage the services of legal counsel.<sup>158</sup> An appeal was filed on behalf of the “Zaria Six.” The amputation sentences were set aside in May 2005. The men were released from prison on the grounds that the two years that they had already spent in prison were sufficient punishment.<sup>159</sup>

Two other criminal cases were tried before the same *sharīa* court in the Magajin Gari area of Kaduna city during the same period. In May

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<sup>153</sup> More recent examples of inter-religious violent conflicts were the “Miss World riots” in September 2002, and the violent spill-overs of the crisis in Plateau State in May 2004.

<sup>154</sup> “Shari’a: Kaduna opts for tripartite legal system,” *The Guardian* (Nigeria), 22/07/2000, 2.

<sup>155</sup> “Kaduna signs bills setting up customary, Sharia courts,” *The Comet*, 03/05/2001, 2.

<sup>156</sup> “Sharia: Two Convicts to Be Amputated,” *This Day*, 10/11/2003, 4; and “Two Sharia convicts face amputation in Kaduna,” *The Guardian* (Nigeria), 10/11/2003.

<sup>157</sup> “Sharia appeal court to review conviction of six men,” *Vanguard*, 17/08/2004.

<sup>158</sup> “Sharia : 6 Await Amputation,” *This Day*, 12/08/2004.

<sup>159</sup> “Sharia court grants bail to six convicts,” *The Guardian* (Nigeria), 18/05/2005, 7; and *The Guardian* (Nigeria), 28/05/2005, 4. I thank Philip Ostien for providing me with information on the outcome of this case.

2002, Halima Abdulkarim was accused by her husband of committing *qadhif*. She was said to have accused him of having an affair with his mother. In court, Abdulkarim denied having made such an allegation against her husband.<sup>160</sup> In June 2002, bus driver Tasi'u Saidu was charged with injuring two women, one of whom was pregnant, by pushing them out of his moving bus after an argument, in which he accused them of being prostitutes.<sup>161</sup> No judgment was reported in either case.

## Bauchi

The last state to be examined in this regional overview is Bauchi. Situated in the Middle Belt, this state has a predominantly Muslim population, but with significant Christian minorities and some pockets of animists.<sup>162</sup> As in Kaduna State, the introduction of Islamic criminal law in Bauchi State led to violent conflicts between the religious communities. Shortly after the introduction of the *sharī'a* in June 2001, several mosques were destroyed in riots that began after a bus driver asked Christian passengers to sit gender-segregated. In July 2001, ethnic and religious clashes killed many dozens of people and forced thousands to flee. Christian minorities in the state felt threatened by the introduction of the *sharī'a* (Peters 2003: 54). These violent clashes prefigured the riots of September 2001 in Bauchi's southern neighbour, Plateau State. In both states the introduction of the *sharī'a* was a controversial topic. However, whereas Bauchi State enacted a *sharī'a* penal code, the government of Plateau State, under the Christian state governor Joshua Dariye (PDP), did not introduce Islamic criminal legislation. In neither case, a tripartite system as in Kaduna seems not to have been envisaged.

In Bauchi State, the application of the *sharī'a* commenced on 1 June 2001 (Peters 2003: 54). A *sharī'a* penal code was enacted in the same year.<sup>163</sup> The Bauchi State Sharī'a Commission Law 2001 provides for the establishment of a *hisba* under the supervision of the *sharī'a* commission (Garba 2006). One court case was reported in 2001, four in 2002, three in 2003 and five in 2004.

One trial for drinking alcohol was identified in late 2004.<sup>164</sup> Two cases of grievous bodily harm were reported: in March 2004, a gang member named Sabo Sarki was arrested and tried. He was accused of having forcefully removed the eyes of a teenage boy to sell them to another

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<sup>160</sup> "Woman Docked for Accusing Husband of Having an Affair with his Mother," *This Day*, 24/05/2002.

<sup>161</sup> "Man Remanded for Assault on Pregnant Woman," *This Day*, 07/06/2002.

<sup>162</sup> Reliable figures on the percentage of non-Muslims in the population are unavailable.

<sup>163</sup> See SIDP.

<sup>164</sup> "Alcohol: Sharia Court Orders Man Caned 80 Strokes," *This Day*, 01/02/2005. The arrest of the culprit, Ibrahim Musa, took place in November 2004.

man who intended to use them in a ritual. Sarki was sentenced to pay compensation of 5.5 million Naira (27,500 US\$). However, the victim rejected the compensation and insisted on retaliation.<sup>165</sup> The second case of grievous bodily harm involved a jealous husband who cut off his wife's right leg with a machete. The wife demanded *qiṣāṣ*. In January 2003, after a trial that lasted several months, Adamu Hussaini Maidoya was sentenced to have his right leg amputated under the knee without anaesthesia. The judge pointed out that Maidoya had to experience the same pain that he had inflicted on his wife.<sup>166</sup> In August 2006, three and a half years after the verdict of first instance, the Bauchi State Sharī'a Court of Appeal rejected Maidoya's appeal. The three *qāḍīs* unanimously argued that the verdict of the Upper Sharī'a Court was correct since Maidoya had confessed to committing the crime.<sup>167</sup>

Nine of the thirteen reported cases in Bauchi State were indictments for sex crimes: five cases of *zinā*, two for rape, and one each for incest and sodomy. In 2001, Hajo Poki was sentenced to 100 strokes of the cane after she was convicted of *zinā*. She had been found pregnant out of wedlock.<sup>168</sup> The sentence was to be carried out after the delivery of the baby. However, some reports indicate that it was executed while Poki was still pregnant.<sup>169</sup> A similar case is that of Adama Yunusa, who, in early 2002, tried to drag the man who she alleged had impregnated her to court to make him assume his responsibilities as the father of her child. When she failed to prove her case, she was sentenced to 100 strokes of the cane and banned from the area. The judgment was confirmed by an appeals court, which, however, revoked the banishment.<sup>170</sup>

In June 2002, Yunusa Rafin Chiyawa was sentenced to death by stoning for having sexual relations with the wife of a neighbour, after he declined repeated opportunities to withdraw his confession to the act.<sup>171</sup> The woman was acquitted after she swore on the Qur'ān that she had been hypnotised by Chiyawa. Human Rights Watch (2004: 32) reports that Chiyawa's sentence was overturned in November 2003. With the exception of the case of Abubakar Aliyu in Sokoto State, this is the only

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<sup>165</sup> "Shariah court convicts man over ritual," *Daily Trust*, 30/03/2004, 5; and "Boy turns down N6m compensation for eyes," *Daily Trust*, 13/05/2004. The reports do not mention if the victim's request for retaliation was granted.

<sup>166</sup> "Man loses limb for amputating wife's leg," *New Nigerian Newspaper*, 06/01/2003, 30. See also "The Justice She Wants," *Newswatch*, 18/11/2002, 48-9.

<sup>167</sup> "Sharia Court of Appeal affirms first amputation in Bauchi," *Daily Trust*, 21/08/2006.

<sup>168</sup> "Sharia court orders amputation of hands, legs in Sokoto," *The Guardian* (Nigeria), 20/12/2001, print edition.

<sup>169</sup> "Niger sharia court sentences two to death by stoning," *The Guardian* (Nigeria), 29/08/2002, 1-2.

<sup>170</sup> "Sharia: Woman Gets 100 Strokes over Pregnancy," *This Day*, 06/05/2002.

<sup>171</sup> "Nigerian man faces death for adultery," BBC News, 27/06/2002.

known case in which a man was convicted and the woman was discharged and acquitted.

No new *zinā* cases were reported in 2003, although the year witnessed three other trials for sexual offences: in September 2003, Jibrin Babaji was sentenced to death by stoning after he was found guilty of sodomy with three boys between the ages of ten and thirteen years.<sup>172</sup> The boys were given six strokes of the cane each, allegedly for accepting ten Naira (seven US cent) for their sexual services. The stoning-to-death sentence was overturned on appeal in March 2004 on the grounds of procedural shortcomings at the initial trial. The lower court judge was ordered to tender an unreserved apology to the three boys and pay them compensation.<sup>173</sup>

In October 2003, Adamu Jugga was dragged before a *sharī'a* court by a woman who accused him of raping her.<sup>174</sup> The outcome of the trial has not been reported.

In late December 2003, the Alkalere Upper Sharī'a Court sentenced Umaru Tori to death by stoning and his fifteen-year-old step-daughter Altine Tori to 100 strokes of the cane, to be administered after the delivery of the child she was carrying at the time of the trial.<sup>175</sup> They were convicted of incest.<sup>176</sup> Umaru Tori confessed to the offence,<sup>177</sup> and a police officer testified in court that Altine Tori tried to resist her step-father when he had forceful sexual intercourse with her.<sup>178</sup> It appears, however, that this testimony was not interpreted in Altine's favour. The sentence was appealed in January 2004. Altine Tori's defence counsel argued that the court should have taken into account that Altine had been forced to commit adultery, that she was a minor at the time of the offence, and that there was no definitive proof of the offence as required by Islamic law.<sup>179</sup> Umaru Tori's appeal was upheld on 24 May 2005 by the Bauchi State Sharī'a Court of Appeal, which ordered that the case be retried before the Upper Sharī'a Court in Kobi.<sup>180</sup> This trial exemplifies

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<sup>172</sup> "Sodomy: Sharia court sentences man to death by stoning," *Daily Trust*, 25/09/2003.

<sup>173</sup> "Sodomy: Judge to pay N3000 for wrongful conviction," *Daily Trust*, 23/03/2004, 5; and "Wrongful conviction: Lower Sharia court judge ordered to apologise," *New Nigerian Newspaper*, 24/03/2004, 21.

<sup>174</sup> "Alleged rape victim, 35, offers to swear by Qur'an," *Weekly Trust*, 04-10/10/2003, 17.

<sup>175</sup> "NIGERIA: Man sentenced to stoning for sex with step-daughter," IRIN, 06/01/2004.

<sup>176</sup> "Incest: Sharia Court sentences man to death by stoning," *Daily Trust*, 06/01/2004, 1-2.

<sup>177</sup> "Sharia: Man to die by stoning for impregnating step-daughter in Bauchi," *The Guardian (Nigeria)*, 06/01/2004.

<sup>178</sup> "Incest: Sharia Court sentences man to death by stoning," *Daily Trust*, 06/01/2004, 1-2.

<sup>179</sup> "Shariah Court Entertains 11-Month-Old Appeal," *Weekly Trust*, 30/11/2004. The final hearing was slated for 7 December 2004. However, the outcome of the appeal could not be established. It is not clear if Altine and Umaru Tori filed their appeal together.

<sup>180</sup> Amnesty International Annual Report 2006.

the vulnerability of women in rape cases, in which the burden of proof rests on the victim due to the fact that consensual intercourse out of wedlock is a criminal offence (*zinā*).<sup>181</sup>

In 2004, three more trials for sexual offences were reported from Bauchi State. Not much information is available on the stoning-to-death sentence against Selah Dabo for rape in September 2004.<sup>182</sup> Two women were sentenced to death by stoning by a court of first instance in September and October 2004, respectively. Their sentences were overturned on appeal: Daso Adamu was acquitted in December 2004 on the grounds of the possibility that her pregnancy was caused by her former husband.<sup>183</sup> In addition, the appeal judge held that the initial trial was improper because the defendant had been dragged to court and tried against her wishes. Nineteen-year-old Hajara Ibrahim was initially sentenced to stoning to death and 100 strokes of the cane after she confessed to having intercourse with a man she said had promised to marry her.<sup>184</sup> Apparently, the lower court learnt of Ibrahim's pregnancy when her father attempted to drag her fiancé to court in connection with his daughter's pregnancy.<sup>185</sup> The latter, however, was discharged and acquitted due to lack of evidence.<sup>186</sup> The sentence was annulled in November 2004 due to procedural flaws in the initial trial. The trials of Daso Adamu and Hajara Ibrahim were the latest cases of stoning-to-death sentences for *zinā* which were reported in the first five years of the implementation of Islamic criminal law in northern Nigeria.

Among criminal cases from Bauchi State, sex crimes are predominant. In the only case of *sariqa* that was reported in the media, Abdul Jolly Hassan was convicted, in June 2002, of stealing eighteen sheep, worth 50,000 Naira (360 US\$). He was sentenced to one year's imprisonment and forty strokes of the cane. The *ḥadd* punishment of amputation for theft was not applied because the animals were not kept in a cage and, therefore, the requirement of *ḥirz* was not met.<sup>187</sup>

However, a considerable number of amputation sentences—for indictments of *sariqa* or as a result of *qisās*—apparently were handed down in Bauchi without attracting the media's attention. If the figures provided are accurate, media reports illustrate well the problem, already

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<sup>181</sup> See also Peters (2003: 19).

<sup>182</sup> Amnesty International Annual Report 2005; and "Sharia : Legal Aid Council to appeal against 30 convictions," *Vanguard*, 17/11/2004.

<sup>183</sup> "Sharia Court Nullifies Death Penalty On Woman," *Vanguard*, 11/12/2004.

<sup>184</sup> "Sharia: Woman to Die for Adultery," *Daily Trust*, 13/10/2004.

<sup>185</sup> "Upper Sharia Court to rule in Hajara's appeal November 10," *Vanguard*, 28/10/2004.

<sup>186</sup> "Sharia: Another woman faces death by stoning in Bauchi," *Daily Independent*, 13/10/2004.

<sup>187</sup> "Man Escapes Amputation over Theft of 18 Sheep," *This Day*, 24/06/2002.

highlighted in other states: defendants sentenced to amputation or stoning to death are remanded in prison for an undetermined period awaiting the execution of the punishment. In June 2003, twelve people were waiting to be stoned to death or have a limb amputated. The sentences required endorsement by Bauchi State Governor Ahmadu Adamu Mu'azu (PDP).<sup>188</sup> In January 2004, twenty-two persons were waiting for the governor to assent to their amputation sentences, while two people, Chiyawa and Jibrin Babaji, were awaiting the execution of their stoning sentences.<sup>189</sup> By October 2004, the number of amputation sentences had risen to twenty-three, while the total number of stoning-to-death sentences imposed in the state was five.<sup>190</sup> In November 2004, the number of convicts awaiting amputation was twenty-eight.<sup>191</sup> By December 2004, the number of people awaiting execution of their stoning sentence had possibly decreased to two, after four stoning sentences—those of Rafin Chiyawa, Jibrin Babaji, Hajara Ibrahim and Daso Adamu—were quashed on appeal.<sup>192</sup> This unsatisfactory situation has prompted reactions from different quarters. Governor Mu'azu has come under pressure from human rights groups<sup>193</sup> and Muslim groups<sup>194</sup> to set aside or implement amputation sentences, respectively.

It cannot be excluded, on the basis of the fragmentary data available, that other northern Nigerian states have experienced a similar development in the numbers of amputation sentences to be executed. Nevertheless, the situation in Bauchi appears to be unique in that it is the only state in which the number of newly reported cases has increased over time. This may be explained by more intensive media coverage in the state. However, it is remarkable that in the great urban centres in north-

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<sup>188</sup> "Kano Sharia court orders amputation of two men for theft," *The Guardian* (Nigeria), 24/06/2003, 3. The verdicts included the stoning-to-death sentence against Yunusa Rafin Chiyawa and the retaliation sentence against Adamu Hussaini Maidoya.

<sup>189</sup> "Sharia: Man to die by stoning for impregnating step-daughter in Bauchi," *The Guardian* (Nigeria), 06/01/2004; and "Man, 45, sentenced to death by stoning," *New Nigerian Newspaper*, 07/01/2004, 28. This again included the retaliation sentence against Maidoya.

<sup>190</sup> "Sharia court sentences woman to death by stoning," *Daily Trust*, 13/10/2004.

<sup>191</sup> "Sharia: Legal Aid Council to appeal against 30 convictions," *Vanguard*, 17/11/2004.

<sup>192</sup> In May 2006, Philip Ostien mentioned to me that a woman was sentenced to death for witchcraft in Bauchi State. However, I have not found more information on this case.

<sup>193</sup> The Legal Aid Council, a Nigerian federal agency which provides legal representation for indigent accused in serious cases, declared that it would file appeals against the conviction of 30 persons by *shari'a* courts in Bauchi State, who were in prison awaiting the execution of their sentence. See *ibid*.

<sup>194</sup> During a courtesy visit by the 'Yan Izala movement, Governor Mu'azu had to exonerate himself over allegations that he was reluctant to implement the judgments, explaining that he had delegated the responsibility of overseeing the implementation of the courts' verdicts to the *shari'a* commission. See "Sharia court sentences woman to death by stoning," *Daily Trust*, 13/10/2004.

ern Nigeria, such as Kano and Kaduna, where media presence presumably is higher than in the remote Bauchi State, and even in states such as Zamfara, Sokoto and Katsina, which present high numbers of cases reported, numbers of identified cases decrease over time. Thus, the increase of cases, with a predominance of sex crimes, in Bauchi State calls for an explanation.

As mentioned, Bauchi is a religiously mixed state. For this reason, missionary groups, like the ‘Yan Izala movement,<sup>195</sup> regard it as an area of propagation of Islam. Shortly after the re-election of Governor Mu’azu in 2003, delegations of the ‘Yan Izala movement visited him on two occasions to commend him on the introduction of Islamic criminal law.<sup>196</sup> Even before this, Governor Mu’azu was aware of the danger posed by overzealous *sharī’a* partisans. In an unprecedented move in December 2002, he publicly advised *sharī’a* judges in the state not to rush to judgment of women accused of adultery on the basis of pregnancy out of wedlock and thus threatened with death by stoning. He said, with reference to the legal concept of the “sleeping embryo,” that a pregnancy manifesting itself up to five years after a divorce may be attributed to the former husband.<sup>197</sup> The fact that no such case had been reported from Bauchi State at that time lends greater significance to this announcement. It is possible that the ‘Yan Izala and other groups that seek to enforce an Islamic way of life are pressuring *sharī’a* judges, in particular on lower—thus more accessible—levels, to accept charges of *zinā* brought before them. As mentioned above, the only two stoning-to-death sentences for *zinā* reported in northern Nigeria in 2004 were pronounced by lower *sharī’a* courts in Bauchi State. Both verdicts were annulled on appeal.

## Conclusion

Since the interpretation of Islamic criminal law is discussed in greater detail in subsequent chapters, I limit myself here to the political and

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<sup>195</sup> The *Jamā’at al-Izālat al-Bid’a wa-Iqāmat al-Sunna*, or ‘Yan Izala in short, is a Muslim anti-establishment movement, which traces its origins to the conflict of Sheikh Abubakar Gumi, former Grand Qāḍī of the Northern Region of Nigeria and founding member of the Muslim World League, and the traditional Nigerian Sufi brotherhoods (Loimeier 1993a). On Gumi’s view on the emergence of the Izala movement, see Gumi (1994: 155f). Christian fundamentalist movements also appear to be active in Bauchi State. They sometimes even claim that Christians make up more than half of the population of the state, which is hardly believable.

<sup>196</sup> See “Mu’azu Restates Commitment to Sharia,” *This Day*, 06/06/2003; and “Ulamas Hail Muazu over Sharia,” *This Day*, 14/07/2003.

<sup>197</sup> “Mu’azu cautions sharia judges,” *Vanguard*, 18/12/2002, 10.

socio-political aspects of the introduction of Islamic criminal law in northern Nigeria.

The debate triggered by the efforts to introduce an Islamic criminal law in northern Nigeria touched on the question of identity and the future of the Nigerian nation, as outlined by the northern Nigerian political scientist and human rights activist Jibrin Ibrahim (2003):

For the pro-Shari'a group, democracy is meaningless without religious freedom, the most important aspect of which is the right to exercise their religion fully, which is impossible without the full implementation of the Shari'a. For the anti-Shari'a group, the full implementation of the Shari'a is a political transformation indicating the establishment of an Islamic state and the persecution of non-Muslims.

The reintroduction of the *shari'a*, in particular the imposition of strict sexual morals, serves as an identity marker among Muslims by creating the impression that corruption and decadence are the result of a loss of Muslim values. Hence the emphasis on sexual morality. The popular support that has resulted from this identity building has, at least in the initial phase, spread throughout northern Nigeria. It can be assumed that religious lobby groups have played a role in this rapid propagation. However, northern Nigeria is not a homogeneous entity and populations in different parts of the region have shown varying levels of dedication to the project heralded by Zamfara State, a fact which also seems to have influenced judicial practice in criminal cases in *shari'a* courts. This is best illustrated by the differences in case numbers reported from the north-west and the north-east of the country. In the Hausa states of the north-west, such as Zamfara, Kebbi, Sokoto, Katsina, Jigawa and Kano, where identification with the historic precedent of the Sokoto Caliphate is strongest, the number of cases identified is high. This may be linked to the activities of state-controlled or independent *shari'a* enforcement groups, which bring infringements of the Islamic rules of conduct to the attention of *shari'a* courts. By contrast, in the north-eastern states, such as Borno and Yobe, where the majority of the population belongs to the Kanuri ethno-linguistic group, the introduction of the *shari'a* in the Zamfara style was widely perceived as a Hausa project. The Islamic identity in these states is shaped by the historical experience of the much older Muslim Kanuri kingdom of Kanem-Borno and its more introspective Islamic tradition. "It is for this reason, and coming from such a historical background," writes political scientist and Kanuri intellectual Kyari Tijani (2002: 31), "that neither the people of Borno nor their leaders or *ulama* ever understood the *furore*, now raging over the *Shari'a* in Nigeria."

It is in religiously mixed states, however, that the symbolic, and therefore political, value of the *sharī'a* has had the most devastating consequences. Here, it is less the number of cases that is of importance than the fact that one religious community is able to prevail over the other by either introducing or preventing the *sharī'a*. Jibrin Ibrahim (2003) argues that the creation of ever smaller states in Nigeria since independence has led to the redefinition of new (ethnic or religious) majorities and minorities on the state level. These groups compete for hegemony and access to public resources. As the 1991 census, and again the 2006 census, did not pose the question of religious affiliation, it is not known which of the two major religions, Islam or Christianity, is the majority in these states: "Political entrepreneurs use religious mobilisation to enhance their legitimacy at the local and national level." Consequently, in states such as Kaduna, Plateau, and Bauchi, where there is no common assessment as to which community holds the majority of the population, violent confrontations between Muslims and Christians over the introduction of the *sharī'a* have broken out. In Kaduna, the state government found a compromise aiming at accommodating the divergent interests in an attempt to limit the tensions. In Plateau State, the government, under the Christian Joshua Dariye, did not introduce the *sharī'a* at all. The most interesting state in this regard, however, is Bauchi, which usually receives little attention outside its own borders. As in neighbouring Plateau State, so too in Bauchi, Christian and Muslim missionaries compete for influence over the population. Both communities claim to be the majority. Thus, in the struggle for political influence, it is essential for Islamic lobbies to establish that Bauchi is a true "*sharī'a* state." We can assume that some of their members are motivated to "promote" Islamic criminal law by dragging presumed offenders—here again emphasis is obviously placed on sexual offenders—to court or by exerting leverage on judges to obtain the desired sentence. In addition, the improper implementation of the changes in the judiciary and the lack of training for *sharī'a* judges leave the courts vulnerable to external pressure.

Has the introduction of Islamic criminal law had an impact on the living conditions in the affected states?

In early 2004, Auwalu Hamisu Yadudu, Professor of Law at the Bayero University in Kano stated that "sufficient time has not elapsed from the first gale of the adoption of *shari'ah*, which commenced late in 1999, to the present, to lead to the emergence of any discernible trend or pattern."<sup>198</sup> Yadudu may be right that judicial practice will develop over time and that certain trends or patterns will become clearer. For the

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<sup>198</sup> Quoted in Ostien et al. (2005: 140f).

time being, I will content myself with identifying the expected results which have not yet materialised. As pointed out in the beginning of this chapter, it was expected that the introduction of the *shari'a* would guarantee security for life and property, reduce corruption and promote good governance.

With regard to security for life, only six cases of homicide and bodily harm tried before *shari'a* courts have been identified across the twelve states over a period of five years.<sup>199</sup> This figure is numerically and statistically insignificant. As for security of property, I have identified at least thirty-eight trials for theft and robbery and forty-two people who were sentenced to amputation of the right hand.<sup>200</sup> Many more amputation sentences are probably unreported. Three amputations were carried out, in 2000 and 2001. Since 2001, the governors have been reluctant to approve amputation sentences. Some people sentenced to amputation have been released after being remanded to prison for a prolonged period. In practice, this means that they suffered a punishment different from their sentence. To date, no one has raised the question if amputation sentences are to be pronounced and carried out in the future. The answer to this question will probably depend on the political climate and, therefore, on the activities of religious groups. The danger that any decision in this field will spark violent reactions should not be underestimated.

Finally, the promotion of good governance falls into the realm of the *ta'zir* legislation, which covers offences committed by public servants. However, only four indictments of a total of ten public servants have come to light. In two cases, no sentence was reported. The indictment of the governor of Jigawa State was dismissed. Since indictments of representatives of public authorities generally attract high attention in the Nigerian media, it is unlikely that the number of indictments of public servants is much higher than this. The low number of cases suggests that the introduction of Islamic criminal law has not had a great impact on public service in the states implementing it. A handful of cases against low and medium-ranking officials cannot be considered a strong deterrent, which is the main goal of Islamic criminal law.

Clearly, the expectations about the benefits that would accrue from the implementation of the *shari'a* were inflated. The resulting disillusionment, however, may motivate northern Nigerian politicians to create more realistic policies, as pointed out by Philip Ostien (2002):

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<sup>199</sup> Chapter Three (p. 104-110) mentions one homicide case and seven cases of bodily harm.

<sup>200</sup> By contrast, the analysis of judicial practice in theft cases (Chapter Three, p. 110-116) is based on the analysis of 51 trials for theft with 52 amputation sentences.

The expected benefits are those associated in many religions with return by the people to conformity with the will of God. But quite probably, notwithstanding the implementation of *shari'a*, the world will wag on much as it always has, and the governments of the implementing states will find that they still have a great deal to do to trim bloated bureaucracies, reform education, fight crime and corruption, foster development, encourage investment, and so on and on. The point is that having implemented *shari'a*, having, so to speak, cleared away that issue, they will be free to focus on the more immediate causes of their problems and perhaps to address them more realistically than they have in the past.

This prediction, made at an early stage of the reintroduction of Islamic criminal law in northern Nigeria, seems to be confirmed by the virtual absence of the topic in the campaigns for the presidential and gubernatorial elections in Nigeria in April 2007.