

Chapter 3 Part III

Sharia Implementation and Female Muslims in Nigeria's Sharia States

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1. Introduction.

A great many female Muslims live in the twelve Sharia States of Northern Nigeria – nineteen or twenty million of them altogether. Of these, about 44% – between eight and nine million – are girls under 15 years old.¹⁶⁰ The aim of this essay is to give a survey, first, of available generalisations about the condition under which all these girls and women live; then of some of the roles that Muslim women played and are playing in the Sharia implementation programme begun in 1999; and finally of the ways in which some of the laws affecting girls and women were changed as part of this programme. Let me emphasise the word “survey”. I have touched on quite a wide range of topics, and at the same time tried to stick quite close to the facts, bringing in only briefly, if at all, the many debates – philosophical, theological, jurisprudential, empirical, policy-related – that surround almost every topic touched on. Every single topic bears further investigation and analysis in depth, not provided here. This is a survey, wide but shallow. If it helps to stimulate further work in depth, that will be all to the good. There is in fact already a literature on the women of Northern Nigeria, particularly the Hausa, to which the reader is referred.¹⁶¹

Two subjects are excluded from this essay:

Sharia implementation and non-Muslim females. There are varying numbers of non-Muslims in the Sharia States: cumulatively about fourteen million.¹⁶² About half of these are girls and women. Most are Christians of one denomination or another, but some are practitioners of African Traditional Religions or other faiths. Sharia implementation will no doubt have had some impact on some of these women, particularly the ones living in the cities and large towns: for instance, early attempts in some Sharia States to enforce rules against women riding on commercial motorcycles, while they lasted, clearly affected

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¹⁶⁰ See the demographic data on Nigeria's Sharia States given in Vol. I, xix.

¹⁶¹ For a sample of the literature see: B.J. Callaway, *Muslim Hausa Women in Nigeria: Tradition and Change* (Syracuse: Syracuse University Press, 1987); C. Coles and B. Mack, eds., *Hausa Women in the Twentieth Century* (Madison: University of Wisconsin Press, 1991); J. Barkow, “Hausa Women and Islam”, *Canadian Journal of African Studies* 6 (1973), 317-28; B. Cooper, “Gender and Religion in Hausaland: Variations in Islamic Practice in Niger and Nigeria”, in H.L. Bodman and N. Tohidi, eds., *Women in Muslim Societies: Diversity Within Unity* (London: Lynne Rienner Pub., 1998). Other works on specific subjects are cited in subsequent notes.

¹⁶² Calculated from the demographic data on Nigeria's Sharia States, Vol. I, xix.

non-Muslim women.¹⁶³ But this essay does not further consider such effects, as to which (again) further research is called for.

Sexual immoralities. This essay does not deal with prostitution or with other cases of fornication and adultery, all of which, for Muslims, are and always have been crimes in the Sharia States. Changes in the laws of the Sharia States on these subjects, made as part of Sharia implementation, are discussed in detail in Part II of this chapter, and the new laws themselves are reproduced in Part IV.5. The complete court records in the two famous *zina* cases of Safiyatu Hussaini and Amina Lawal are reproduced in Chapter 6, with other information about the cases and citations to some of the literature on them.

2. Background on female Muslims in Nigeria's Sharia States.

In this part of the paper I want to try and sketch in a broad picture of the Muslim women of Northern Nigeria, building this up primarily around statistics found in a publication of Nigeria's National Population Commission (NPC) entitled *Nigeria Population Census 1991 Analysis: Gender and Sustainable Development*.¹⁶⁴ This publication analyses data gathered in Nigeria's 1991 population census, with some reference to other work published in the subsequent ten years to 2001 when the NPC analysis was published. Therefore most of the information on which the NPC generalisations are based is now over fifteen years old. But more recent statistical information, particularly information allowing one to distinguish Northern women, or Sharia State women, from other women elsewhere in Nigeria – which the NPC publication does – is very difficult to come by, if at all.¹⁶⁵ And the rate of social change is (and always has been) slower in the North than elsewhere in the country, so the old data are still likely to fit the Northern States quite well. But none of the statistical information I have seen includes “religion” as a variable at all, so it is impossible from such data to distinguish Muslim women, wherever located, from the rest of the women – except in terms of their estimated numbers in the Sharia State populations already referred to. In sum, most generalisations about the Muslim women of the Sharia States must necessarily, to varying extents, be educated guesswork. Nevertheless the data do converge around certain themes, and they can be supplemented with other materials which help round out the picture.

¹⁶³ We have e.g. this report from Zamfara State, taken down by one of our researchers, Prof. Musa Gaiya, during interviews with Christian leaders in Gusau in January 2003: “A clear case of the infringement of Christians' rights is the Gusau Local Government's bye-law banning women from riding motorcycles. Christian women who were seen on motorcycles were molested. A pastor's wife, Mrs. Bature, was beaten because she rode on a motorcycle. A pregnant woman was beaten when she was being conveyed to the hospital. She was in labour. She almost gave birth on the street. CAN [Christian Association of Nigeria] condemned in strong terms the application of the bye-law to Christians and we added that Christians would not obey such a law because it was not meant for them.”

¹⁶⁴ Abuja: NPC, 2001. Pages of this report hereafter referred to in the text as “NPC nn”.

¹⁶⁵ Some data from Nigeria's 2006 population census is available (population figures by State, see http://en.wikipedia.org/wiki/Demographics_of_Nigeria), but no further analysis of the data collected has yet been published. 2005 statistics on quite a number of subjects are available from UNICEF, see http://www.unicef.org/infobycountry/nigeria_statistics.html, but none of this is broken down by Nigerian region or state and only a few items are broken down by rural/urban. Other available data have similar deficiencies.

a. Rural vs. urban. One important consideration is that a fairly high percentage of Nigeria's people live in "rural" as opposed to "urban" areas, as these terms are defined by the demographers. The 1991 census put the rural population at 64% for all of Nigeria (calculated from the table on NPC 11). Probably the figures are higher in most Northern States than in most others, so the North's population is still predominantly rural, and farming and farm-related work are among many people's principal activities. In general, "There are more women than men in the rural areas. In the urban areas there are more men than women" (NPC 7). "This suggests that in Nigeria more males than females migrate out of their home villages to urban centres" (NPC 11). "Most elderly men and women live in rural areas" (ibid.). "For both sexes, the population of dependent children (0-14) is higher in rural than in urban areas" (ibid.). Although the NPC report does not say this, the rural areas also suffer by comparison with the urban areas in terms of all forms of infrastructure like roads, electrification, telecommunications, and health and educational facilities. UNICEF data for 2004 give a bit of further information (pan-Nigerian) about the rural vs. the urban populations:¹⁶⁶

	Urban	Rural
% of population using improved drinking water sources, 2004	67	31
% of population using adequate sanitation facilities, 2004	53	36

b. Literacy; education. "[L]iteracy rates are higher for males than for females" (NPC 29).¹⁶⁷ "Urban males and females are more literate than their rural counterparts" (ibid.).¹⁶⁸ "Literacy rates are higher in the southern states" (ibid.). In particular, of the twelve States with the lowest literacy rates in 1991 (counting two 1991 States, Bauchi and Sokoto, twice each, as they were both split in 1995), ten were Sharia States; Yobe came last with male and female literacy rates of 42.6% and 20.9%, respectively (NPC 35). "The widest gender gap in literacy is found in the northern states, a result of the historical reluctance to enrol females in school" (NPC 29). Reasons given for this reluctance include early marriage; the view that "a woman's place is in the home"; the belief that females do not need education for the kinds of work that they will do in life; to some extent the practice of female seclusion; and various fears of "excessive emancipation": "that educated women do not make 'good' (submissive?) wives; that they are morally corrupt or promiscuous; that they are barren...; that educated girls will reject parental choice of husbands; that they will find it difficult to get a husband" (NPC 39-40, quoting Federal Ministry of Education 1989 *Blueprint on Women Education in Nigeria*). As with literacy, levels of educational attainment are also higher for men than for women, and higher in the southern states than in the northern ones (NPC 41 and 43). Although even in the North, Primary School enrolment is higher for females than for males, at all higher educational levels, beginning with Junior Secondary School, Northern females quickly fall behind, and do so faster and farther than Southern females do (NPC 43). "Marked differences appear at the Senior Secondary, Technical and higher levels of education

¹⁶⁶ From http://www.unicef.org/infobycountry/nigeria_statistics.html.

¹⁶⁷ The table on p. 31 indicates that for all age-groups undifferentiated by location 65.7% of males and 47.8% of females are literate.

¹⁶⁸ The table on p. 37 indicates that for all age-groups 57% of rural males and 39% of rural females are literate, as opposed to 80% and 64% of urban males and females.

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[Poly/College and University] where there were more males than females” (NPC 41). In the North, the highest educational attainments of large percentages of both males and females are outside the “Western” educational system, in a category called “Others” and said to be “mostly Koranic and other religious education”:

Educational Attainment	Total %	Male %	Female%
North East Region			
...			
Others [“mostly Koranic and other religious education”]	37.9	36.9	39.9
North West Region			
...			
Others	33.1	32.0	34.7
South East Region			
...			
Others	6.6	6.2	7.0
South West Region			
...			
Others	6.6	6.1	6.8

In other words, in the Muslim North large numbers of both boys and girls are receiving at least the rudiments of an Islamic education – and this is the highest education they do receive. This includes some instruction in the Arabic language, at least as part of learning the Qur’an. But for purposes of the NPC study, “literacy” was defined as “the ability to read and write with understanding in any language local or foreign” (NPC 29), and as we have seen even using this broad definition literacy rates are low in the North, especially among females. There are large literatures on the history and problems of education in Northern Nigeria in general,¹⁶⁹ and on the education of Muslim women in particular,¹⁷⁰ to which the reader is referred.

¹⁶⁹ A sample, with thanks to Chikas Danfulani: A.B. Fafunwa, *A History of Education in Nigeria* (Ibadan: Ibadan University Press, 1991); D.H. Williams, *A Short Survey of Education in Northern Nigeria* (Kaduna: Northern Region Ministry of Education, 1959); A. Ozigi and L. Ocho, *Education in Northern Nigeria* (London: George Allen and Unwin Ltd., 1981); M. Hiskett, “Islamic Education in the Traditional and State Systems in Northern Nigeria”, in G. Brown and M. Hiskett, eds., *Conflict and Harmony in Education in Tropical Africa* (London: George Allen and Unwin Ltd., 1975), 134-51; M. Bray, *Universal Primary Education in Nigeria: A Case Study of Kano State* (London: Routledge and Kegan Paul, 1981); M.S. Umar, “Education and Islamic Trends in Northern Nigeria: 1975-1990”, *Africa Today*, 48 (2001), 127-150 and “Islamic Arguments for Western Education in Northern Nigeria”, *Islam et Societes au Sud du Sahara* 16 (2002), 85-106.

¹⁷⁰ A sample, again with thanks to Chikas Danfulani: P.K. Tibenderana, “The Beginning of Girls’ Education in the Native Administration Schools of Northern Nigeria, 1930-1945”, *Journal of African History*, 26 (1985), 93-109; J. Trevor, “Western Education and Muslim Fulani/Hausa Women in Sokoto, Northern Nigeria”, in Brown and Hiskett, *Conflict and Harmony in Education in Tropical Africa*, 247-70; M. Csapo, Religious and Economic Factors Hindering the Education of Girls in Northern Nigeria”, *Comparative Education*, 17 (1981), 311-319; B. Callaway and S. Enid, “Law, Education and Social Change: Implications for Hausa Muslim Women in Nigeria”, in L.B.

c. “Economic work”.

i. Female labour force participation. The NPC data on labour force participation distinguish between “people in the labour force” – i.e. those actually employed or seeking employment in “economic work”¹⁷¹ – and “people in the economically active population” i.e. *all* those 10+ years of age. The ratio between the labour force and the economically active population is called the “refined activity rate” (RAR). The data indicate that for all of Nigeria the RAR for males was 58.9%, while for females it was only 34.3% – i.e. a much larger percentage of economically active males than females were employed or seeking employment. (NPC 54-56). “Female labour force participation rates are higher in the southern than in the northern states” (NPC 47). In fact, twelve of the thirteen States with the lowest female RARs are the twelve Sharia States, ranging from Katsina, with a female RAR of 6.6%, to Borno at 22.4% (NPC 56, again counting Bauchi and Sokoto twice so as to include Gombe and Zamfara). This “gives the impression that women were not particularly active”, which is likely to be misleading in various ways; among other things, “defining women’s participation in economic activity is especially difficult in rural agricultural economies”, which the Sharia States predominantly are (NPC 48).¹⁷² Certainly the millions of poverty-stricken Muslim women and girls throughout the rural North who spend their days gathering firewood, fetching water, caring for children and the elderly, and cooking for large numbers of people, would be surprised to hear they are not particularly active. To the extent that the low RARs for Northern females reflect reality, this is attributed to “the effects of factors such as history, religion and other socio-cultural practices” (NPC 67, mentioning such practices as *purdah*, Hausa *kulle*), marriage and child-bearing and consequent confinement to home-related work, and the loss of face some husbands might feel if their wives worked outside the home). As to which percentages of people who are in the labour force do which kinds of work, “Men dominate in gainful employment in all

Iglitzen and R. Ross, eds., *Women in the World, 1975-1985: The Women’s Decade* (Santa Barbara: ABC Clio Press, 1985), 181-205; N.N. Knipp, *Women’s Western Education and Change: A Case Study of the Hausa-Fulani of Northern Nigeria* (Ph.D. dissertation, Northwestern University, 1987); F. Lawson, *Islamic Fundamentalism and Continuing Education for Hausa Muslim Women in Northern Nigeria* (Ph.D. dissertation, University of Minnesota, 1989); F.S. Niles, “Parental Attitudes Towards Female Education in Northern Nigeria”, *Journal of Social Psychology* 129 (1989).

¹⁷¹ “Economic work” is defined as “any activity for which the respondent received some pay or remuneration, profit or which generated family gains at any time during the reference period” (p. 47), thus evidently excluding subsistence farming and activities related thereto, and all the work of keeping households going – gathering firewood, fetching water, etc. – that has to be done in poverty-stricken rural economies. The NPC recognises the difference between its definition of “economic work” and the definition of work used in the UN Report on Women, which “includes subsistence production of goods for their own households and non-economic activities such as domestic work, family and elder care, construction or repair of owner-occupied buildings, and volunteer work for which individuals receive no remuneration” (ibid.). See also next footnote.

¹⁷² A text box on NPC 49 discusses some of the difficulties of measuring women’s labour force participation. See also p. 58: “[I]n Nigeria males often undertake the preparation of land for cultivation, and are regularly regarded as *‘the farmers.’* Agricultural activities of women, for example, planting, harvesting and processing of the harvested products, may not be recorded directly as agricultural work. Hence, women’s contributions in agriculture are often relegated to the background and assumed to lag behind those of men....”

occupational categories except in sales and service” (NPC 47). A full 39.4% of women in the labour force are employed in “sales”, as opposed to 12.3% for men; these numbers are representative of the average for the Sharia States as well as for the rest of the country (NPC 59).

ii. Hawking by young girls. A great deal of the sales activity of women is petty trading or, in the case of many young girls, the hawking of small items – groundnuts, biscuits, oranges, etc. – by carrying them on their heads on trays from place to place around the town. There are many worries in the Muslim community about this hawking by young girls. On the one hand, “mothers support girls in going out hawking because of the benefit they receive from the proceeds. The proceeds can be used [among other things] to bring *kayan daki* (marriage trousseau) for the girl and other preparations for the girl’s marriage.”¹⁷³ But for the girls the consequences can be dire. They may start as early as 7 a.m. and close at 5 or 6 p.m. They are withheld from school, so their educations suffer. Worse, they are sometimes lured into prostitution at that early age, selling themselves for the equivalent of \$1 or less to gatemen at private houses, workers on building construction sites, and so on. Sometimes they become pregnant.¹⁷⁴ There have been efforts in the past in the North to control hawking by young girls.¹⁷⁵ But the practice still persists, as will indeed be visible to any traveller in Northern towns and cities.

iii. Income levels. The NPC data do not include information on income levels. I insert here some UNICEF information on Nigerian per capita and household incomes, unfortunately not broken down by location:¹⁷⁶

GNI per capita (US\$), 2005	560
GDP per capita average annual growth rate (%), 1970-1990	-1.4
GDP per capita average annual growth rate (%), 1990-2005	0.7
% share of household income 1994-2004*, lowest 40%	15
% share of household income 1994-2004*, highest 20%	49
Average annual rate of inflation (%), 1990-2005	23
% of population below \$1 a day, 1994-2004	71

¹⁷³ E. Schildkrout, “The Employment of Children in Kano (Nigeria)”, in G. Rodgers and G. Standing, eds., *Child Work, Poverty and Underdevelopment* (Geneva: ILO, 1985), 81-113, quoted in I.N. Sada, F.C. Adamu and A. Ahmad, eds. *Promoting Women’s Rights through Sharia in Northern Nigeria* (Zaria: Centre for Islamic Legal Studies, Ahmadu Bello University, 2005), available at www2.dfid.gov.uk/pubs/files/promoting-women-sharia.pdf, 9.

¹⁷⁴ See letter from Buhari A. Gabari on female hawking in Kano, *New Nigerian*, 15th February 2006, 17. See also Chapter 2, 52.

¹⁷⁵ Sokoto State Legal Notice No. 24 of 1977 (Control of Hawking); Katsina State Hawking (Control) Law of 1985, Cap. 57 of the 1991 Laws; Kano State Petty Trading (Prohibition of Female Juveniles) Law of 1988, Cap. 109 of the 1991 Laws; Jigawa State Petty Trading (Prohibition of Female Juveniles) Law, Cap. 110 of the 1998 Laws.

¹⁷⁶ From http://www.unicef.org/infobycountry/nigeria_statistics.html.

iv. Higher-paying jobs. But returning to the census data on who does what kinds of work: in the administrative/managerial category, male employment was 3% compared to 1.5% for females; for professional/technical workers the figures were 7.2% and 6.1%, respectively, with the numbers in both categories generally lower in the Sharia States (NPC 59). As to the better-paying jobs, requiring more education, the NPC volume includes an interesting essay by Aisha Umar Yusuf, a prominent journalist and publisher, written in 2000, describing the process by which the Muslim North is gradually being persuaded to open up to more education and better employment opportunities for girls and women; this is worth quoting at length.

[A] few families began to include the odd daughter or two in the annual school enrolment programme.... Subsequent government policies like free or subsidised education encouraged certain parents to send both their male and female children to school.... [W]hen the advantages of girl-child education began to manifest with young women taking up government appointments and living relatively better lives than their uneducated peers, many more families felt encouraged to send their female children to school. ... But there were still those who were not so impressed by the promise of a better life for their daughters into compromising their chastity.... NGOs helped to enlighten such communities that girl-child education does not in any way lead to wayward daughters but that lack of proper parental guidance and other societal influences do.... The next obstacle faced by the now educated Northern woman was her role in public life. Many husbands and fathers still said that education was acceptable but after getting the certificate, it's back to the house for girls. Still more enlightenment campaigns followed.... A popular argument presented before those who opposed a working life for women is whether they would rather have men teaching their daughters in schools or attending to their wives in hospitals than fellow women? This helped the situation a little since most men readily acceded that it was a lesser evil to have their daughters work, than to have them perpetually at the mercy of men in such critical areas.... Today in almost all facets of human existence, the Northern Nigerian woman is there as a factor to reckon with in major professions like medicine, engineering, law, pharmacy, architecture and banking. Northern women of different tribes and religious affiliations are very visible indeed. So also in more liberal careers like teaching, nursing, journalism as well as commercial and trading ventures, Northern women can really be said to have come a long way.... Nigeria also celebrates Northern women in politics and academia. Though ministerial appointments and their likes at the State and Local Government levels are dismissed as mere tokenism by women empowerment NGOs, it is still a pointer to how far women have come especially in this part of Nigeria.¹⁷⁷

v. Women in politics. Speaking of women in politics, let me pause to give the scorecard of how women from the Sharia States fared in the 2007 elections to Federal and State offices, as best I have been able to determine it. Appointments of women from these States to President Yar'Adua's cabinet are also shown.

¹⁷⁷ A.U. Yusuf, "The New Northern Woman", *Weekly Trust*, 25th-31st August 2000, quoted in NPC 67-68.

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Sharia State Females in Selected Offices: 2007¹⁷⁸

State	Federal Senate	Federal House of Reps	Federal Ministers	Govs/ Deputy Govs	State Houses of Assembly
Bauchi	0/3	0/12	0/1	0/2	2/31
Borno	0/3	0/10	0/1	0/2	0/28
Gombe	0/3	0/6	1/1	0/2	0/24
Jigawa	0/3	0/11	0/1	0/2	0/30
Kaduna	0/3	1/16	0/0	0/2	2/34
Kano	0/3	0/25	0/2	0/2	0/40
Katsina	0/3	0/15	0/1	0/2	0/34
Kebbi	0/3	1/8	1/1	0/2	0/24
Niger	1/3	0/10	0/1	0/2	2/27
Sokoto	0/3	0/11	0/1	0/2	0/30
Yobe	0/3	0/6	0/1	0/2	0/24
Zamfara	0/3	0/7	1/1	0/2	0/24
Totals	1/36	2/137	3/12	0/24	6/360

These numbers are of course pitiful. The next table adds some national and historical perspective:

Total Females in Selected Offices: 1999, 2003, 2007¹⁷⁹

Elected or appointed in:	Federal Senate	Federal House of Reps	Federal Ministers	Govs/ Deputy Govs	State Houses of Assembly
1999	3/109	13/360	5/47	Govs: 0/36 DGs: 3/36	12/990
2003	4/109	21/360	6/40	Govs: 0/36 DGs: 3/36	39/990
2007	9/109	32/360	8/42	Govs: 0/36 DGs: 6/36	53/990

So it appears that some small progress is being made at the national level. Nevertheless, the data clearly show the continuing monopoly of political power at all levels by males, all over the country.

¹⁷⁸ Senate: www.nassnig.org/senate/; House of Reps: www.nassnig.org/House/; Ministers: www.guide2womenleaders.com/Nigeria.htm and www.newswatchngr.com/editorial/allaccess/nigeria/10730171737.htm; Govs/Deputy Govs and Houses of Assembly: telephone calls to the National Orientation Agency or other contacts in each State, with thanks to Messrs. Bulus Dabit and Emmanuel Igomu for their assistance with this. Mrs. Saudatu Mahdi, the Secretary-General of WRAPA, also provided numbers for the Houses of Assembly, for which I am grateful; I have used her numbers in cases of conflicts with other sources.

¹⁷⁹ Senate, House of Reps and Houses of Assembly for 1999 and 2003: O. Nzeshi, "Women, Still Underdogs in Nigerian Politics", *ThisDay*, 11th May 2007, 9. Ministers for 1999 and 2003: *Nigeria Standard*, 1st July 1999, 1 and *ThisDay* 17th July 2003, 1. Senate, House of Reps and Ministers for 2007: websites mentioned in previous note. Govs and Deputy Govs all years: per Messrs. Dabit and Igomu. Houses of Assembly for 2007: Mrs. Saudatu Mahdi.

d. Family life. It is in this field that Muslim women's rights activists have focussed many of their efforts: in the struggle to adjust ways of thinking about and structures of power and control within families, in order to make males and females more equal partners in the family enterprise from youth to age: gender equity in short. In Nigeria the family, including the still-thriving extended family, is at the heart of society, and making family life fairer for women will make all of life fairer for them. This struggle has many dimensions.

i. Marriage. Almost everybody in Nigeria gets married at least once. "The 1991 census data show that only 3.3% of Nigeria's population aged 45-49 had never been married at the time of the census" (NPC 20). The figure for females is even lower: only 2.2% of females aged 45-49 had never been married (NPC 21). Most marriages are under customary law or, in the case of Muslims, under Islamic law (*nikaḥ*); no records are kept of such marriages in any government office.¹⁸⁰ Many Nigerians, especially the men, get married several times during the course of their lifetimes, because of widespread polygyny, and (among both men and women), because of divorce and remarriage. Both of these factor are discussed in more detail below.¹⁸¹

ii. Early marriage for females. "Females enter marital unions at earlier ages than males: more than two thirds are married by age 24. In contrast, only one in five males is married by that age" (NPC 7). A table, partially reproduced here, bears this out.¹⁸²

Age Group (years)	% Married	
	Male	Female
10-14	3.9	7.0
15-19	6.2	35.1
20-24	22.1	67.8
25-29	50.3	83.8
30-34	75.6	89.9
35-39	86.9	89.3
40-44	90.3	85.0
45-49	91.8	78.1
50-54	92.1	70.1
55-59	92.1	61.3
60-64	90.0	53.3

¹⁸⁰ According to a 2005 survey by DFID, 76% of Muslim respondents were married under Islamic law and 18% more were married under customary law. British Council Development Services, "Results of Women's Rights Survey, Muslim Respondents Only", July 2005 (PowerPoint presentation, copy in the possession of the author), slide 8. The results of the national survey, not limited to Muslim respondents only, is available at <http://www.gsdrc.org/go/topic-guides/justice/safety-security-and-access-to-justice>, "Results of Women's Rights Survey".

¹⁸¹ And see L.M. Solivetti, "Family, Marriage and Divorce in a Hausa Community: A Sociological Model", *Africa* 64 (1994), 252-271.

¹⁸² NPC 21. See also *New Nigerian*, 18th November 2003, 20, reporting that according to the 2003 National Democratic and Health Survey (NDHS), at least 25 percent of Nigerian girls are married off before the age of 15 years.

The NPC analysis does not break these data down by State, but it is clear that the percentages of females married off very young – to much older men – are higher in the Muslim North than elsewhere in the country. As we have seen this is one factor that stands in the way of girl-child education in the North. It also contributes to serious public health problems, notably vesico-vaginal fistula (VVF). This condition, which is associated with early pregnancy and child-birth, before the girl's body has properly matured, results in an uncontrollable passage of faeces or urine through the vagina. It leads in many cases to early divorce by their husbands of affected girls, and leaves the girls incapable of further pregnancy or child-birth, which in turn reduces their chances of remarriage. Its incidence in Northern Nigeria is very high.¹⁸³

Women's rights activists are addressing the problem of the early marrying-off of girls in at least two ways. One is to attack "the gross abuse of the power of *ij'bar* (the right of a father or his legal substitutes to give the hand of a daughter in marriage without necessarily obtaining her consent)."¹⁸⁴

Regarding the power of *ij'bar*, women expect the curtailment of the power to only the biological father, and even then, subject to no obvious potential worldly gains by him. This will curtail the brazen violation of the right of a girl to consent to her marriage and will also reduce the incidence of "forced" marriage, a common cause for runaway brides who mostly end up in prostitution or become disoriented about marriage all their lives.¹⁸⁵

Another tool in the fight against early marriage is Nigeria's Child Rights Act, the domesticated version of the UN Convention on the Rights of the Child. The most controversial provision of the Child Rights Act has been one putting the minimum age for marriage at eighteen years. The interesting story of how the Act has fared so far is well told in the following report:

Nigeria ratified the Convention on the Rights of the Child (CRC) on April 16th, 1991.... In 1996, Nigeria submitted its first Report on the Implementation of the CRC to the UN Committee on the Rights of the Child.... One of the major recommendations made by the Committee was to finally ensure the domestication of the CRC, as this is necessary for its full implementation under Nigerian law. A first Bill on Children's Rights had already been elaborated in 1993, but could not be passed into law by the military government because of opposition from religious groups and traditionalists. A special committee was subsequently set up to "harmonise the Children's Bill with Nigerian religious

¹⁸³ See *New Nigerian*, 8th November 2006, 26: "The United Nations Population Fund (UNFPA) recently stated that about 800,000 cases of VVF are recorded in Nigeria annually and with 20,000 new cases added each year. In places like Kano an average of about 30 new cases are now recorded daily."

¹⁸⁴ S. Mahdi, "Sharia and Women in Nigeria: The Expectations", a paper presented at the international conference on "The Implementation of Sharia in a Democracy: The Nigerian Experience", organised by the Centre for Islamic Legal Studies, Zaria and the Center for Islam and Democracy, Washington, D.C., held at Abuja 7th-9th July 2004, copy in the possession of the author, p. 3.

¹⁸⁵ *Ibid.*, 5-6.

and customary beliefs.” The Bill, providing for the rights and the responsibilities of children in Nigeria, as well as for a renewed system of juvenile justice administration, was rejected by the Parliament [i.e. National Assembly] in October 2002 – again on grounds of its contents being contrary to Islamic values, traditions and culture. “The main objection targeted a provision setting 18 years as the minimum age for marriage. This was [said to be] incompatible with religious and cultural traditions in various parts of the country, where [girls] are given in marriage at a younger age.” Many national and international NGOs, as well as other sectors of the civil society in Nigeria, criticised this decision and forced the legislator to reconsider its decision to oppose to the Child Rights Bill [sic]. Finally, it was adopted in September 2003. ... Nonetheless, very few States have passed the Child Rights Act into law so far.¹⁸⁶

The minimum age for marriage set in the Act continues to be one of the principal reasons why up to date it has proved very difficult to persuade Northern Houses of Assembly to ratify it. A 2005 speech by Hajiya Inna Mariam Ciroma, then the Federal Minister of Women Affairs, gives an indication of the nature of the debate:

“It is erroneously believed that if a girl does not marry earlier than 18 years of age, she will not be able to produce [more than] two or three children. Those who hold this belief also conjure that it is a ploy to introduce Western standards with the ultimate aim of reducing the Muslim population”, she said. She added, “Your Excellency [the Governor of Borno State], you and I know that nothing could be further from the truth given that a woman is productive until she reaches menopause and assuming a 3 year interval between pregnancies, the average woman who gets married between ages 18 and 20, is capable of having at least 8 children if Allah so permits.”¹⁸⁷

iii. Polygyny. The NPC census data do not go into the question of polygyny. I simply state briefly a few propositions on the subject. Polygyny has from time immemorial been sanctioned in the customary laws of all Nigerian ethnic groups; it is also sanctioned under Islamic law; and traditionally, high percentages of males of every tribe and kindred have been polygynists. Correspondingly high percentages of females have traditionally married into households which were already polygynous at the time of the marriage or subsequently became so. Although under the influence of economic change and Christianity open polygyny is declining among other religious groups, it is probably not doing so – or not much, anyway – among the Muslims, who according to Islamic law – i.e. divine, not merely customary law – are allowed and even encouraged to have up to four wives at a time, and frequently do have at least two or three.¹⁸⁸ Together

¹⁸⁶ E.E.O. Alemika et al., *Rights of the Child in Nigeria: Report on the implementation of the Convention on the Rights of the Child by Nigeria*, prepared for the UN Committee on the Rights of the Child, 38th Session, Geneva, Jan. 2005, available at http://www.cleen.org/nigeria_ngo_report_OMCT.pdf, pp. 4-5 (footnotes omitted).

¹⁸⁷ K. Nwezeh and M. Mohammad, “Islam is No Hindrance to Women Child's Rights – Gov”, *ThisDay*, 29th August 2005 (internet edition).

¹⁸⁸ According to the 2005 DFID survey already cited, 63% of male Muslim respondents had only one wife, 28% had two, 5% had three, and 3% had four. British Council Development Services, “Results of Women’s Rights Survey, Muslim Respondents Only”, slide 7.

with high rates of divorce and remarriage this implies quite a number of wives for many Muslim men over the course of their lives.

iv. Fertility and related matters. I quote several of the key findings of the NPC analysis of the data on "Gender and Reproductive Health" from the 1991 census, all from NPC 70:

- "The fertility rate is still high in Nigeria and varies among the States. The Total Fertility Rate (TFR) for the country was 5.89 in 1991. The TFR ranges between 5.1 in Ogun State to 7.8 in Adamawa State. In general, fertility is higher in the northern than the southern states."
- "Total Fertility Rate decreases with increase in the number of years spent in school. TFR for women with post secondary school education is 4.6 compared to 6.1 for women with no education."
- "The lowest fertility rate (3.58) is found among women in administrative/managerial occupations. Women in the agricultural sector, with minimal education, have the highest TFR of 5.99."
- "Infant Mortality Rate (IMR) is high in Nigeria. The national average is 93 infant deaths per 1000 live births and it is higher among male infants. High IMR is common in states where the proportion of births given by young women under age 20 is high." In fact the five States with the highest infant mortality rates are all Sharia States, and the same five States also lead in the category of Child Mortality Rates (NPC 79 and 81).
- "Contraceptive prevalence is very low in the country."
- "Female Genital Mutilation is practiced mostly in the southern parts of the country."

v. Divorce. The divorce rate is also quite high particularly among Muslims, where for a man divorce is easy: he may simply declare in an official tone that he is divorcing one of his wives and send her away (*talak*); he need not give any reason. Records of such divorces are not even officially kept so it is hard to know the rates at which men use it – but the complaints from the women suggest the rates are high, as this recent item from a Northern newspaper suggests:

In an effort to check the rampant cases of broken homes in Kano State, Voice of Divorcees, Widows and Orphans, an NGO, has called on the House of Assembly to enact a law that will stipulate heavy penalty on any man found to have unjustifiably divorced his wife. Most marriages get broken based on flimsy reasons, and it is the woman and children that suffer.¹⁸⁹

A woman may also, theoretically at any rate, divorce her husband against his will, through the court, if she gives a reason the court will accept¹⁹⁰ and pays a compensation

¹⁸⁹ *New Nigerian*, 14th September 2005, 11.

¹⁹⁰ The reason needn't be a very strong one: "There is also the well-known case of Thabit bin Qais and his wife, who asked for separation from Thabit because of his looks and the Holy Prophet allowed it requiring only of the wife the return of the garden Thabit gave her." S.I. Nchi

to the husband, often set at the amount of the dower she received at the outset (*ketu*); or if she proves certain types of defects in the husband, such as impotence, insanity, or disease (*fashkebi*).¹⁹¹ Women complain, however, that various factors conspire to prevent their using these avenues of escape from unwanted husbands as often as they might wish. “Provisions in Muslim family laws are blatantly violated, denied or ignored due to [cultural, economic and political factors that impair the enjoyment of women’s rights under Sharia]. Where their just application is available, there is a limitation to women’s access to the courts/mediation structures.”¹⁹² I am aware of no data comparing rates of divorce separately for men and women – e.g., how many times, on average, do they (1) get married, and (2) get divorced, within their lifetimes: my guess is that the rates in both categories are much higher for men than for women. In any case the net result is that “at every age, females were at least twice as likely as males to be separated or divorced” (NPC 22). “Most males remain in marriage throughout their lives relative to most females who spend their older ages either divorced, separated or widowed” (NPC 7). The truth of this last statement is apparent from the table on p. 84 above, which shows the percentages of males who are married remaining high into the older age groups, while the percentages of females who are married steadily declines: this pattern continues into old age.

vi. Reasons for divorce. One reason women may wish to divorce their husbands is “their inability to secure enforcement of their right to maintenance and equity especially in [polygyny].”¹⁹³ The problem is not with the rights under Islamic law, which are very clear, but with their realisation and if necessary enforcement in practice. Another reason is that some husbands behave violently towards their wives.

Worst of all is the physical violation (wife battering) of women in gross violation of the symbolic stance of men’s right to “chastise” their wives. This is often without recourse to the laid-down actions [specified in the Qur’an] preceding the exercise of that avenue of correction.¹⁹⁴

Unfortunately, men inclined to be violent towards their wives or others are to a large extent protected under the Northern Penal Code, the relevant section of which is worth quoting in full:

55. (1) Nothing is an offence which does not amount to the infliction of grievous hurt upon any person and which is done—

and S.A. Mohammed, *Islamic Personal Law and Practice in Nigeria* (Makurdi: Oracle Publishing Company Ltd., 1999), 87.

¹⁹¹ Ibid., 87-97. There are further complications of the law of divorce, discussed amply in the source cited, which cannot be gone into here.

¹⁹² S. Mahdi, “Sharia and Women in Nigeria”, 2; see also S. Mahdi, “Women’s Rights and Access to Justice”, in J. Ibrahim, ed., *Sharia Penal and Family Laws in Nigeria and in the Muslim World: Rights Based Approach* (Nigeria: Global Rights Partners for Justice, 2004), 173-182, detailing the problems Northern women have with access to justice; and see various of the essays in J.N. Ezeilo, M.T. Ladan and A. Afolabi-Akiyode, eds., *Sharia Implementation in Nigeria: Issues and Challenges on Women’s Rights and Access to Justice* (Enugu: Women’s Aid Collective, 2003).

¹⁹³ S. Mahdi, “Sharia and Women in Nigeria”, 2-3.

¹⁹⁴ Ibid., 3, citing Qur’an 4:34: “And for those on whose part you fear disobedience, admonish them and keep away from their beds and chastise them....”

- (a) by a parent or guardian for the purpose of correcting his child or ward such child or ward being under eighteen years of age; or
- (b) by a schoolmaster for the purpose of correcting a child under eighteen years of age entrusted to his charge; or
- (c) by a master for the purpose of correcting his servant or apprentice such servant or apprentice being under eighteen years of age; or
- (d) by a husband for the purpose of correcting his wife such husband and wife being subject to any native law or custom in which such correction is recognised as lawful.

(2) No correction is justifiable which is unreasonable in kind or in degree, regard being had to the age and physical and mental condition of the person on whom it is inflicted; and no correction is justifiable in the case of a person who, by reason of tender years or otherwise, is incapable of understanding the purpose for which it is inflicted.

As Saudatu Mahdi among others has argued, this relic of colonial days, a sanction for grown men to behave violently towards others including their wives and children, should be repealed.¹⁹⁵ Unfortunately, in the new Sharia Penal Codes, it has instead been perpetuated, in some States in even harsher form (quoted here from the Harmonised Sharia Penal Code Annotated and showing the variations among the States, see Chapter 4):

77. (1) Nothing is an offence which does not amount to the infliction of grievous hurt upon any person and which is done:
- (a) by a parent or guardian for the purpose of correcting his child or ward;¹⁹⁶ or
 - (b) by a school master for the purpose of correcting a child entrusted to his charge;¹⁹⁷ or
 - (c) by a master for the purpose of correcting his apprentice such apprentice being under eighteen years of age;¹⁹⁸ or
 - (d) by a husband for the purpose of correcting his wife.

vii. Who are heads of households? – and the continuing strength of the patriarchy. When women are divorced, separated, or widowed, where do they go? The census data on distribution of heads of households by State and gender are revealing here. They show that the ten States with the lowest percentages of households headed by women are all Sharia States – ranging from 3.8% female heads of household in Kano State to 5.9% in Kaduna State. By contrast, in Delta State 32.5% of households are headed by females, and most other States are in the 20-30% range (NPC 19). In other words, in the Sharia States, most women by far, even if they are divorced, separated, or

¹⁹⁵ Ibid.

¹⁹⁶ Gombe, Jigawa, Kano, Katsina, Kebbi, Yobe, Zamfara: “child or ward being under eighteen years of age”. Bauchi: “under the age of maturity”.

¹⁹⁷ Gombe, Jigawa, Kano, Katsina, Kebbi, Sokoto, Yobe, Zamfara: “child under eighteen years of age”. Bauchi: “under the age of maturity”.

¹⁹⁸ All Sharia States except Kaduna: “servant or apprentice”.

widowed, still live in households of which someone else – some male – is the head. This suggests the continuing strong hold of the old patriarchal social structure in the Muslim North, where most women are at least nominally members of some man’s – her father’s, her husband’s, her brother’s, or some other “guardian’s” – household. In fact the patriarchy continues its hold all over Nigeria: women in all parts are at the mercy of men, who throughout the population are still able to control many aspects of their women’s lives; and they – the men – often run things very arbitrarily, unreasonably and sometimes violently in their own favour, as many of the statistics we have been looking at quite clearly show. This is changing in all parts of the country. Women, including Muslim women, are gradually liberating themselves from the unfair control of men, which has up till now been customary in their societies. But it is changing faster in the south than it is in the Muslim North, which as ever is in many ways the most conservative party to the Nigerian federation.

e. Women’s dressing.¹⁹⁹ The way women dress does not seem to have been much of an issue among Nigeria’s Muslims until the mid-1970s. Up till then pretty much all girls and women, throughout the North in particular, from bottom to top of the social pyramid, dressed conservatively and modestly when outside the home and off the farm: the reader should think of the colourful wrappers, blouse and wrapper combinations, bou-bous, head-ties, etc. which spread throughout West Africa in the twentieth century. To these many Hausa women added the *gyale*, a light cloth, often silky or filmy in texture, perhaps one metre wide by two metres long, thrown over one shoulder, or over both shoulders from front to back or back to front, or draped over the head and down across the front, as the wearer’s mood might dictate; in other parts of the North this light outer wrap came in different sizes and styles. Fashions could change – in terms of textiles, print designs, head-tie-tying styles, and so on. But the basic modest mode of dressing was quite consistent, and there does not seem to have been much worry among pious male Muslims about what the women were wearing.

But in the 1970s and 1980s at least two things changed. One was the expansion of the university system in the North, bringing new Federal universities to Sokoto, Maiduguri, Kano, Bauchi, Jos, Kaduna, Minna, Ilorin, and so on – all now in addition to the North’s first university, Ahmadu Bello University in Zaria. This brought to these cities many modern young women from all parts of Nigeria, most of them non-Muslims, who came as students to the new universities (few Northern women could meet the admission requirements). These young women brought with them, and displayed publicly, many new ideas about female dressing – often anything but modest. There was therefore an increasing public presence of scantily-clad young females in Northern cities. This definitely did upset conservative Muslim males, and probably many other people as well, and there was bound to be a reaction.

¹⁹⁹ In addition to my own experience growing up and attending school and university in the post-colonial North, this section of the paper also draws on H. Mahdi, “The *hijab* in Nigeria, the woman’s body and the feminist private/public discourse”, a paper presented at the conference on Islam and the Public Sphere in Africa, sponsored by the Institute for the Study of Islamic Thought in Africa (ISITA), Northwestern University, 17th-19th May 2007, copy in the possession of the author, with thanks to Hauwa Mahdi.

The Muslim reaction became part of the much wider upsurge of political Islam in the 1970s and '80s, which – along with the changing climate of Muslim opinion worldwide – had at least two main instruments in Nigeria. One was the work of Sheikh Abubakar Gumi and the organisation with which he was closely associated, *Jama'atu Izzalatil Bid'ah Wa'ikamatis Sunnah* (The Islamic Organisation for Eradicating Innovation and Establishing Sunnah), widely known as Izala. Izala's ideology was Sunni, and within Sunni Islam, more or less Wahabi. The other main instrument was Sheikh Ibrahim Yaqoub Zaqzaqi and the organisation he led, the Islamic Movement of Nigeria (IMN). This added “an Iranian Shi'i dimension to political Islam in the country.”²⁰⁰ Each of these organisations had definite opinions about women and their roles. And one of the messages of both organisations was not just that women, including university students, should reject decadent Western styles and return to traditional modest modes of dressing, but more specifically that women – Muslim women at any rate – should adopt something up to then not much used in Nigeria – the *hijab*. Going well beyond the traditional modest dress of West African women including head-tie and *gyale*, the *hijab* imposes, on top of everything else, a further plain covering drawn tightly around the face and draping loosely down to the knees or so. As time went on one saw increasing numbers of Muslim women and girls wearing the *hijab*, and the subject of the *hijab* became an important matter of debate in Muslim circles in Nigeria as elsewhere in the world.

From the later part of the 1970s one could observe women, usually young, with the *hijab* in institutions of higher education in Nigeria. Because of where and who the wearers were, one could infer that the *hijab* has its origins in the values of the urban middle class. By the late 1980s, its use had spread to other classes of urban women and gradually to some of their rural sisters. By the 1990s, the idea of the *hijab* has played a role in the challenges posed to some federal and states' governments' uniforms policy in the public service sector such as the nursing profession. With the introduction of Islamic law in 1999 [i.e. Sharia implementation], some of the Muslim states introduced the *hijab* as a compulsory part of girls' uniforms in state schools. Thus, overall the dress change has become visually louder in the Nigerian public space and is fast becoming a compulsory part of female dressing.²⁰¹

I shall return to this subject below when changes in the laws in the Sharia States especially affecting women are examined.

f. Women's organisations. I guess that most Nigerians, including most Muslim women, belong to at least two or three different social groups organised around common interests – ethnic, religious, occupational, gendered, or other. There are women's wings of many predominantly male organisations, like the Islamic Movement of Nigeria mentioned above. One large umbrella organisation of such religiously-centred groups, the Federation of Muslim Women's Associations in Nigeria (FOMWAN), has over 500 member organisations:

²⁰⁰ Ibid., 17.

²⁰¹ Ibid., 2.

FOMWAN's aim is to promote the understanding and practice of the teaching of Qur'an and Sunnah through:

- a. education of women in the teachings of Islam;
- b. encouraging Muslim women to establish groups throughout the country for educational and *da'awah* purposes;
- c. establishing a framework for national cooperation and unity among women Islamic associations;
- d. providing a forum for Muslim women's views to be expressed at national and state levels.²⁰²

But there are also associations of market-women, women farmers, women lawyers, and other occupational groups,²⁰³ and organisations struggling for the realisation of women's rights in general, like the Women's Rights Advancement and Protection Alternative (WRAPA),²⁰⁴ BAOBAB for Women's Human Rights,²⁰⁵ and the Voice of Divorcees, Widows and Orphans already mentioned. To some extent the Federal and State Governments are fostering these organisations. For instance, the Director of Women Affairs at the Kano State Ministry of Women Affairs and Social Development told our researchers in 2003 that

over 250 women NGOs work with the Ministry, including, for instance, FOMWAN and the Association of Muslim Women Doctors, who among other things visit with women in hospitals and provide free medical services. Many of the NGOs are formed to take advantage of government economic support programmes which give out soft loans used for the formation of cooperatives and other activities.²⁰⁶

Likewise, in Kaduna State

the Directorate of Women affairs [again within the State Ministry of Women Affairs and Social Development] networks with NGOs to fight anti-women policies or issues. Women are advocating for gender mainstreaming – not equality with men per se – in public offices. Part of the advocacy is that women should be given recognition as human beings and not just be used and dumped.

²⁰² L. Okunnu, "Women, Secularism and Democracy: Women's Role in the Regeneration of Society", a paper delivered at the Conference on Sharia held at the Commonwealth Centre, Commonwealth Institute, Kensington, London, 14th-15th April, 2001, available at www.shariah2001.nmnonline.net/okunnu_paper.htm, giving a great deal of further information about FOMWAN. There seem to be two FOMWAN-related websites, www.fomwan.org/ and www.themuslimwoman.org/entry/fomwan-working-for-nigerian-muslim-women/, neither of which would open when last checked (27th July 2007).

²⁰³ See e.g. *New Nigerian*, 8th September 2005, 21, reporting a meeting chaired by the then-Federal Minister of Women Affairs and Social Development, Hajiya Inna Mariam Ciroma, for various women organisations in Borno State including the sorts mentioned.

²⁰⁴ For information about WRAPA see <http://www.wrapifl.com/>.

²⁰⁵ For information about BAOBAB see www.baobabwomen.org/.

²⁰⁶ Interview with Hajiya Amina Maude, Kano, 12th March 2003, by M. Gaiya, S. Fwatshak and K.A. Umar.

Women are sensitised through workshops and seminars on their rights. They are advised to have good knowledge of their various religions and use it to defend their rights. In this advocacy campaign the Ministry works with women NGOs like FOMWAN, WRAPA, CAN [Christian Association of Nigeria] (WOMEN WING), BANTU FOR DEVELOPMENT, LEADS, GENDER ACTION TEAM, WOTCLEF. These organisations enlighten and educate women on their rights and take up issues of violations of the rights of women.²⁰⁷

In sum Nigerian women, including Muslim women of many different levels of educational attainment, occupations, and shades of opinion, have become increasingly active in the organised articulation and pursuit of their interests and their rights under the law, including Islamic law.

3. Roles of Muslim women in Sharia implementation.

a. Some generalisations about the attitudes of Muslim women toward Sharia implementation. Sharia implementation has unquestionably been primarily a “male thing”, conceived and driven along by core groups of Muslim men, who tapped into deep reservoirs of emotion among the Muslim masses. Muslim women too were carried along. As Muslims, mostly uneducated, how could they fail to follow their learned leaders, who promised so much betterment if only the *ummah* would return to conformity with the will of God? Moreover, the initial reactions of non-Muslims to the Sharia implementation programme were so violently negative that Muslims, including the women, were driven together into a large measure of unity; little space was left among them, at least at the beginning, for expressions of doubt or debate about the details. This only opened up as time went on.

Let me give just two illustrations of the early reactions of women to the Sharia implementation programme. The first is an incident reported in the newspapers in December 1999 – after Zamfara State had got the ball rolling and intense pressure was building up on the Governments of other States to follow suit:

“Women protest delay in Sharia implementation in Kano”. Under the auspices of Women in Islam, an NGO, about 5,000 women stormed Government House, protesting the Government’s alleged foot-dragging in the full implementation of Sharia in the State. All the women can see are increased crime, thuggery, fuel hawking, exorbitant prices for food, alcoholism, and other anti-Sharia activities. They warned that Sharia might not realise its full potentials in the State until separate commuter vehicles for women are introduced. The Governor responded, saying there is no going back on Sharia implementation; there will be no half measures; but that care must be taken not to trample on the rights of non-Muslims and Christians.²⁰⁸

²⁰⁷ Interview with Mrs. Anna Gumwesh, a Deputy Director of the Directorate of Women Affairs, Kaduna, 8th November 2006, by S. Fwatshak and S.H. Liman.

²⁰⁸ *The Guardian*, 13th December 1999, 6, here summarised not quoted.

This shows how Muslim women too were mobilised as part of organised campaigns pressing for Sharia implementation; the incident is set in the context of the Kano politics of the day in an essay by Dr. Ibrahim Na'ya Sada in another chapter of this work.²⁰⁹

The other illustration is a full-page advertisement taken out by FOMWAN in February 2000, signed by its National President and National Secretary. This “advertorial” stated that at its quarterly meeting held in Abuja on 28th and 29th January 2000, FOMWAN had adopted the following resolutions (here summarised not quoted):²¹⁰

- FOMWAN appreciate the concern of various NGOs about the expansion of Sharia in parts of the country, particularly as it may affect women.
- FOMWAN believe this concern is largely misplaced, and urge all concerned to be humble and learn the tenets of Sharia from reliable sources rather than hold on to age-old misconceptions and misinformation.
- FOMWAN recognise that Nigeria is a multireligious and multicultural society and believe that in diversity lies our strength. We should therefore learn to show tolerance and mutual respect for our religious differences.
- FOMWAN support and salute the courage of the Governor of Zamfara State and other States that have responded to the yearnings of their predominantly Muslim populations by enlarging the scope of Sharia in their States. This is in keeping with the democratic principle that upholds the wishes of the majority.
- FOMWAN urge all States that are intending to enlarge the scope of Sharia to practice the system of *shura* (consultation) as prescribed in the Qur'an and practised by the Holy Prophet Muhammad so as to carry their people along with them.
- In interpreting and implementing the Sharia such States are urged to set an example of honesty, transparency and fear of Allah.

We see here remarkable restraint. There is a recognition of the concerns of non-Muslims about the potential adverse effects of Sharia implementation on women (expressed at the time by various women NGOs). But the non-Muslims are urged to calm down, to respect the beliefs and desires of their Muslim compatriots, and to wait and see how the proper application of Sharia might in fact benefit women, not harm them. Turning to their fellow Muslims – i.e. the men – the women say that in the process of Sharia implementation they wish to be consulted: this was also expressed in other forums.²¹¹

²⁰⁹ I.N. Sada, “The Making of the Zamfara and Kano State Sharia Penal Codes”, Chapter 4 (Vol. IV), 22-32, at 25-28.

²¹⁰ *The Guardian*, 10th February 2000, 36.

²¹¹ See e.g. the summaries of written memoranda submitted to the Committee Set Up to Advise the State Government on the Implementation of Sharia in Sokoto State, contained in the Final Report of the Committee, submitted to the Governor on 16th December 1999 (copy in the possession of the author), submission of Hajija Laraba Dattijo of the Women Society: “Narrated the historic and constitutional basis for the adoption of Sharia in the State and the roles played by women in the history of Islam. She suggested the need to involve and encourage women to participate in the process and implementation of Sharia in Sokoto State. She further emphasised the need to protect the rights of women in the society as prescribed in the Sharia Law.”

The men in charge are also cautioned: be honest, act transparently, fear God. This expresses what was perhaps the greatest reservation among women about Sharia implementation: scepticism about the men managing it.

How many of them discharge their responsibilities and fulfil their primary duties and obligations as fathers, husbands, neighbours, leaders, and the sundry roles they find themselves in, as provided under the Sharia? Which of them can sincerely claim that they are fair in their relationships with others, or between their wives, if in a polygynous setting? How many are guided by the precepts of even-handedness and honesty in their business dealings with Muslims and non-Muslims alike, rather than their personal interest? How many more are transparent and accountable to the public, in all matters of leadership and governance?²¹²

Nigerians have seen many “panaceas” come and go – good ideas ruined by maladministration. There was little reason to believe that this latest panacea, Sharia implementation, would in the end be any different. But most women were willing to wait and see, and in the meantime to do what they could to help make things work.

b. Women involvement in Sharia implementation.

i. The Sharia Implementation Committees. The main architects of Sharia implementation were the Sharia Implementation Committees appointed by the State Governors to advise them on how to proceed. In the course of our attempts to document the process, we were able to collect the reports of these committees from six States: Bauchi, Borno, Katsina, Kebbi, Niger, and Sokoto.²¹³ From the evidence of this sample, it appears that the wish of women to be consulted in the Sharia implementation process was hardly ever honoured. In only one State – Bauchi – were women included on the Sharia Implementation Committee itself: they were two out of a twenty-nine person committee.²¹⁴ In only one State – Katsina – did the Sharia Implementation Committee actively seek out a women’s organisation – FOMWAN – to solicit its views.²¹⁵ In only two States – Katsina and Sokoto – is there evidence that women – in fact one woman in each case – otherwise took part in the consultative processes of the committees.²¹⁶ Otherwise the Sharia Implementation Committees and those with whom

²¹² M. Iman, “Punishments under Sharia and their Significance”, in *Newswatch*, 3rd November 2002, internet edition.

²¹³ For full details see Chapter 2 of this work, “The Sharia Implementation Committee Reports and Related White Papers” (Vol. II).

²¹⁴ See Chapter 2, 10-11. The two women were Dr. (Mrs.) Habiba Muda Lawal and Hajija Aisha Awak Ja’afar, both of whom served on the subcommittee on Public Enlightenment.

²¹⁵ Report of the Technical Committee on Constitutional Provisions for the Application of Sharia in Katsina State (dated January 2000), vol. I, Main Report, Appendix A, list of all the groups, associations, institutions and individuals contacted by the committee, listing FOMWAN Chairman.

²¹⁶ Katsina: see *ibid.*, vol. II, verbatim reports of hearings held around the state: Hajija Yaha Mani is reported as having chaired the hearings in Zone VI (Mani, Mashi, Dutsi and Bindawa, 16th November 1999). Sokoto: Hajija Laraba Dattijo of the Women Society submitted a memorandum to the committee, see n. 211 *supra*.

they consulted seem to have been all male – even though many issues affecting women were treated.

In Bauchi, even the inclusion of two females on the Sharia Implementation Committee was criticised. Here is how the Chairman of the Committee, Kadi (now Grand Kadi) Abdullahi Marafa, responded:

Another criticism which is of no effect on us is that there are women members in the Committee.... As to the inclusion of women in the Committee, it should be understood that this Committee is to come up with recommendations regarding the implementation of Sharia. It is not this Committee that will implement the recommendations. Therefore, the issue of involving women in the Committee is of no effect. Sayyidatina Aisha reported so many hadiths which are currently in use. If she had not been permitted to contribute in this way, we would not be benefiting from the application of those hadiths in our lives. Then also there are the allegations, aimed at confusing women about the aims of Sharia implementation, that with the coming of Sharia men will be asked to marry four wives, and that the amount of bride price men are expected to pay will be limited to some small amount. The women members of our Committee will assist greatly in explaining the real purposes of Sharia implementation to women and overcoming these confusions.²¹⁷

ii. Other involvement of women in Sharia-implementing institutions. Sharia implementation has entailed the setting-up of various new organs of government – notably Sharia Courts, but also other administrative and advisory bodies: Sharia Commissions and Councils of Ulama, *zakat* boards, *hisbah* organisations, *da'awah* (preaching and teaching) groups, and others. Two States, Zamfara and Kano, have established anti-corruption commissions as parts of their Sharia implementation efforts.

Except for the *hisbah* and *da'awah* organisations, there is little involvement of women in any of these Sharia-implementing groups. Certainly there are no women among the alqas of the Sharia Courts (or probably anywhere in the administrative apparatus of these courts) – even though it might be as judges, administering Islamic law on a daily basis, that women could do the most to close the gap between the rights of women in Islamic legal theory, and women's practical enjoyment of those rights, at present impaired by the prejudices and practices of male judges derived not from Islam but from culture and self-interest. Are there precedents in Islamic history for female *qadis*? This may be debatable.²¹⁸ Certainly in most Sharia States there are females among the judges of the Magistrate and High Courts – Muslim women educated in the university faculties of law.²¹⁹ This is perhaps something that women's rights activists should think about –

²¹⁷ Chapter 2, 147.

²¹⁸ Although Maliki authority is quite clear: *qadis* must be male. See e.g. Ibn Asim, *Jagorar Masu Hukunci* (Alhaji Usman Muhammad Daura's translation of *Tufah: Zaria*: Hudahuda Publishing Co. Ltd., 1996), pp. 3-4, listing the qualifications of *qadis*, and saying, among other things, that any judgment passed by a woman is null and void.

²¹⁹ In 2005 then-Chief Justice of Nigeria M.L. Uwais reported, at a meeting of the International Association of Women Judges, that only three Nigerian States – Jigawa, Katsina, and Nasarawa – did not then have any female judges. See *New Nigerian*, 20th October 2005, 28. This means that 10

working towards the appointment of qualified women as judges of the Sharia Courts. As far as I know this has not yet been on anyone's agenda. One reason perhaps is the low level of Islamic education among Muslim women: the schools of Islamic legal studies in particular, the pathways to posts as *alkalis*, remain male bastions. There are however growing numbers of women versed in Islamic studies and in the Arabic language which is the medium of such studies; growing numbers of women, in other words, among the *ulama*. Perhaps one day we shall see such women appointed at least to the Sharia Commissions and Councils of Ulama in the Sharia States. For now, they are completely absent from such bodies, except, as far as I know, in one State. Sometime after Sharia implementation began in Niger State, an Advisory Council of Ulama was established, with Sheikh Ahmed Lemu as its Chairman. The idea of appointing women to this body was proposed, the Chairman supported it, the Governor agreed, and women are now represented in the Council by Hajiya Diya Bala, a frontline politician, and Justice Amina Wambai of the Niger State High Court. According to the Secretary of the Council, Federal High Court Justice Mamman Kolo (retired), the women have proved very useful.²²⁰

It is in the *hisbah* and *da'awah* organisations that women are best represented – doing the work of these organisations among the women. To give the reader some idea what this work is, I quote selectively, without further comment, from the:

**Plan of Activities of [Bauchi State] Hisbah Women's Wing
on Counselling the Lawful and Cautioning Against the Unlawful²²¹**

*Alhamdu lillahi rabbil alamin. Wassalatu wassalam ala asbratil mursalin.*²²²

Introduction

We are pleased at the efforts being put in place to implement Sharia in Bauchi State. It is imperative to restate to ourselves that this task is squarely on us. If we fail to do it, nobody will do it for us. *Hisbah* work is a voluntary work, it is an act of worship and it is a means of assisting the religion of Allah. We are fully aware that Allah has promised to assist any person who assists His religion. We therefore need to be aware that *hisbah* work is not administration, it is not trading, it is not unskilled labouring and it is not contracting; it is an act of worship. This is the understanding we require concerning *hisbah* work.

out of 12 of the Sharia States did have them. For instance, the Chief Judge of the High Court of Sokoto State for some years has been Hon. Justice Aisha S. Dahiru. The Solicitor-General of Zamfara State in the early days of Sharia implementation, Mrs. Bilkisu Bello Aliyu, has since been appointed to the Federal Court of Appeal. Borno State got its first woman High Court judge in 2005 – Justice Adzira Gana Mshelia.

²²⁰ Based on interviews with Hajiya Aisha Lemu, Minna, 7th April 2003, by J.M. Nasir, J.D. Gwamna and R. Awal, and with Justice Mamman Kolo, Minna, 29th November 2005, by S. Fwatshak and S.H. Liman.

²²¹ As contained in the Report of the Task Force on Sharia Implementation Bauchi State of Nigeria, Vol. V, Major Activities of the Task Force, submitted to the Governor of Bauchi State on 14th August 2001 (copy in the possession of the author).

²²² "We give thanks to Allah, the Lord of the worlds. We seek blessing and peace for the highest of messengers."

* * *

Organisation of ward committees

[In addition to the Central Committee] [t]wo subcommittees will be formed in every ward as follows:

- a. Women Enlightenment Committee
- b. Women Dispute Resolution Committee

The Women Enlightenment Committee is responsible for conducting continuous preaching in every nook and cranny of the ward. The committee is also responsible for identifying places where offences are committed and reporting upon them. ... The Women Dispute Resolution Committee is to comprise women representatives from different branches. It will assist the Enlightenment Committee in dispute resolution.

Qualifications of *hisbah* members

1. She should be God-fearing.
2. She should ensure that her activities/deeds accord with her words.
3. She should be truthful in all circumstances.
4. She should be a moderate and not an extremist.
5. She should possess reasonable knowledge of Sharia.
6. She should emphasise cordiality, respect and networking.
7. She should forgive her transgressors.
8. She should think for the good of the committee.
9. She should be generous even to the most niggardly.
10. Her words should always stress upon the positive development of the committee.
11. Her life should be focused on the principle of counselling the lawful and cautioning against the unlawful.

* * *

Activities of the *hisbah* member

Briefly, the *hisbah* member can conduct her activities of counselling the lawful and cautioning against the unlawful in the following manner:

1. Performance of activities that have become unlawful under the Sharia (but not tradition).
2. Sharia must have explicitly counselled in favour or cautioned against that activity she intends to act upon.
3. She is to conduct her activity at the time the event is occurring or after the event has occurred in the community. These events include:
 - a. Harmful traditions that have turned the act of marriage into commerce.
 - b. Excessive materialism in all activities.
 - c. Ignoring excellent norms such as upholding trust, truthfulness and *dattako* (gentlemanly behaviour).
 - d. Lack of self respect which has given rise to begging and sycophancy.
 - e. Blind imitation of customs of Europeans and their abominable way of life.

- f. Failure to perform the *salat* at its appointed time.
- g. Setting up others as partners to Allah, especially sorcerers.
- h. Respecting the husband's trust.
- i. Removing *hasada*, jealousy, enmity among colleagues (co-wives).
- j. To understand that wealth comes from Allah; it is not a creation of some person or an inheritance from the husband.
- k. Doing away with lies, fraud, harm and fornication.
- l. Understanding the essence of marriage and its importance.
- m. Respecting and enhancing the discipline of children.
- n. Creating conducive forum for the discipline.
- o. Receiving or giving interest on loan.
- p. Unity of Muslims, and
- q. Any other issue that affects the life of a Muslim or Islam.

Many seminars and workshops, led by prominent *ulama*, have been held all over the North for women members of *hisbab* and *da'awah* organisations; what they learn there the women put into practice when they return to their villages and towns.²²³

c. Representing and instructing women in legal matters. The early fears of some, about the potential adverse effects of Sharia implementation on women, have already been mentioned. These fears were not long in finding confirmation – in the famous *zina* cases of Safiyatu Hussaini (2001-02) and Amina Lawal (2002-03). What struck women about these cases was not only the extreme sentences imposed – *rajm*, stoning to death – I believe unprecedented in Nigeria even in the time of the Sokoto Caliphate of the nineteenth century – but most especially the manifest unfairness involved: the men, denying everything, getting off scot-free, while the women, pregnant out of wedlock, were condemned. Women's organisations, including WRAPA and BAOBAB, were very much involved in the successful prosecution of the appeals in these cases, which in the end set excellent precedents and demonstrated the ability of the Muslim courts to do justice in difficult cases.²²⁴ The *zina* cases, and others involving very serious punishments like the amputation of hands for theft, had another good effect: they stimulated many women to a deeper study of Islamic law and its sources. Many women who identify with Islam, especially "modern" women (i.e. those with university educations), are not very keen on the penal aspects of the Sharia as classically interpreted. This is especially true among the women educated as lawyers. Their instinctive reaction is: this cannot be correct in this day and age. But to inquire about and debate its correctness in Islamic law such women have of necessity been drawn more and more to study and deepen their knowledge of Islam, so that they can take part in the discussions on a more equal basis with the men – including the *ulama*.²²⁵ The resulting enhanced knowledge of women and

²²³ The *hisbab* organisations and their work will be the subject of a separate chapter of this work, forthcoming.

²²⁴ For full details see Chapter 6 of this work (Vol. V).

²²⁵ The last few sentences draw on an interview with two "modern" Muslim women who may remain nameless, Abuja, 6th December 2002, by P. Ostien. See also the essay by Maryam Iman, an Abuja-based lawyer, entitled "Punishments under Sharia and their Significance", already cited, questioning from within Islamic law the correctness of imposing such punishments as amputations and stonings to death in present-day Nigeria.

women's organisations, of Islamic law and of the rights of women under it, has in turn fed back into the work of individual women lawyers and of NGOs like WRAPA and BAOBAB, of providing legal education and counsel and representation to women in legal matters of all sorts – not only criminal cases, but especially family matters such as marriage contracts and divorce settlements, child custody, maintenance, and widows' inheritances. So this too has been an important role of some Muslim women in Sharia implementation: attempting to educate women about, and to vindicate in many concrete cases all over the North, the rights of women under the Sharia to equity and fairness in their dealings with men. "Many women believe they stand to benefit from a correct implementation more than from patriarchy, which subordinates them to men and denies them the full realisation of their human rights and potentials."²²⁶

d. The activist agenda. To conclude this section of the paper I summarise briefly a number of items on the agendas of Muslim women activists: ways in which they are trying to use Sharia implementation, or work with it, to improve the position of their sisters in the Sharia States. These are gleaned from several different sources and except in the case of the codification project will not be referenced further.²²⁷ Some of the issues being addressed have been touched on already. In subsections (iii) and (iv) the items in brackets are my own suggestions.

i. Codification of Islamic personal law. Perhaps the most far-reaching project is to reduce the Islamic law of personal status applied in the Sharia Courts to codified form. In most countries with substantial Muslim populations this has already been done. In Nigeria it has never been done: the law is still whatever the judges – the alkalis, most of them not very well-educated – say it is from case to case. An important goal of WRAPA, led by its Secretary-General, Mrs. Saudatu Mahdi, has been to try to persuade the Governments of the Sharia States to codify their Islamic personal law,

in order to bring it into focus by defining the laws, rights, duties and obligations of parties. Specifically, codification would achieve the following:

1. Ensure that implementation of personal law is truly Islamic and not an arbitrary hybrid of principles derived from non-authoritative interpretations, traditions and customs, or the whims of individuals.
2. Ensure that women enjoy the rights granted to them by Allah within the framework of Sharia at all levels and in all instances of family life.

²²⁶ S. Mahdi, "The Role of Women in Sharia Implementation in Nigeria", a paper presented at the conference on The Sharia Debate and the Shaping of Muslim and Christian Identities in Northern Nigeria, held at the University of Bayreuth (Germany), 11th-13th July 2003 (copy in the possession of the author).

²²⁷ In addition to the papers of Saudatu Mahdi and Maryam Iman already cited, see Bilkiyu Yusuf, "Women and Empowerment in Islam", a paper presented at the Second National Conference of the Supreme Council on Sharia in Nigeria (SCSN) held at Damaturu, Yobe State, 21st October 2002, published in *Weekly Trust*, 13th December 2002 (internet edition); Ayesha Imam, "Recognition of Women's Human Rights in Nigeria", Dr. Imam's acceptance speech, on behalf of herself and BAOBAB, of the John Humphrey Freedom Award 2002, given at Montreal, 9th December 2002, see <http://www.ichrdd.ca/english/commdoc/humphrey2002/acceptancespecechhAyeshaImamEng.html>; and Abiola Akiyode-Afolabi, "Democracy, Women's Rights and Sharia Law", *ThisDay*, 29th January 2003 (internet edition).

3. Provide standards, consistency and enhance the administration of justice. Judges (especially at the lower courts) will be guided by the well-researched code thereby reducing instances of deficient rulings and other constraints due to scarcity of literature, which even where available is in classical voluminous Arabic texts.²²⁸

Mrs. Mahdi urges that those who undertake the work of codification should

draw from a broader study of all the schools of Islamic jurisprudence for application as appropriate with final benefit to the weak and vulnerable in society. Logically women also expect active, sustained enlightenment and advocacy by eminent Islamic scholars, jurists and activists, geared towards attitudinal reorientation and legal reforms for a demarcation between the true provisions of Sharia and cultural prejudices that clearly degrade women.²²⁹

This work has in fact gone ahead, slowly, with pilot studies in Sokoto and Zamfara States, in cooperation with the Centre for Islamic Legal Studies, ABU Zaria, and the Georgetown University Law Centre, with funding from Georgetown and from the MacArthur Foundation. For further information see <http://www.wrapaifl.com/>.

ii. Specific personal law issues.

- effectuation of the right to consent or refuse consent to a marriage
- effectuation of the right to consent or refuse consent to the terms and conditions of a marriage contract
- raising of the minimum age of marriage
- limitation of the power of *ij'bar*
- establishment of a system of registration of all marriages and marriage contracts, to provide documentary protection for the legal and social status of women
- effectuation of the right of wives and children to maintenance within marriage
- effectuation of the right to equality of treatment in polygynous households
- restrictions or a total ban on polygyny
- effectuation of the right to consultation within the family
- effectuation of the right of women, including married women, to engage in economic activity, including the power to enter into contracts, to own and dispose of property, and to take up employment
- limitation of the male power of *talak*
- effectuation of the female power of *kebul* where it is called for
- establishment of a system of registration of all divorces and divorce settlements to provide documentary protection for the legal and social status of women
- effectuation of the right of a mother to custody of her children upon divorce or the death of her spouse

²²⁸ From a summary provided by WRAPA, in the possession of the author; see also S. Mahdi, "Women's Rights in Shari'ah: A Case for Codification of Islamic Personal Law in Nigeria", in P. Ostien, J.M. Nasir and F. Kogelmann, *Comparative Perspectives on Shari'ah in Nigeria* (Ibadan: Spectrum Books Ltd., 2005), 1-6.

²²⁹ S. Mahdi, "Sharia and Women in Nigeria", 4.

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- effectuation of the right of a woman and her children to maintenance for appropriate periods after divorce
- effectuation of the right of women to inherit from parents, husband, and children

iii. Penal law issues.

- harmonisation of the Sharia Penal Codes to provide uniformity in the application of Sharia law from State to State
- repeal of the sections of the Penal and Sharia Penal Codes that protect the physical abuse of wives and children by their husbands and fathers
- limitation or elimination of the right of physical “chastisement” of wives and children by their husbands and fathers
- [separation of the law of rape and incest from the law of ordinary *zina* between consenting adults, to make conviction for rape and incest easier?²³⁰]
- respect for the personal privacy of women and their protection from arbitrary arrest following unfounded or malicious charges

iv. Access to justice issues.

- better information to women about their rights and about how to effectuate them
- more and better legal services available to even the poorest of women
- reduction of court fees to enable easier access; many illegal fees are imposed by court staff; this should be stopped
- improvement of the quality of Sharia Court judges through better education and better pay
- improvement of Sharia Court administration
- improvement of the Sharia Court Inspectorates and the appellate process to ensure better supervision of the Sharia Courts
- [women appointed as Sharia Court judges?]

iv. Other issues.

- educating more women to higher levels in all fields, including the professions, and educating all women to at least minimal levels of literacy, numeracy, etc.
- improving the economic strength of women at all levels
- bringing more women into public office
- effectuation of the rights of women as provided in international agreements to which Nigeria is a party

This is a large and varied agenda. Various women and women’s organisations specialise in various parts of it. And many of the items on it – the wider social issues, affecting not only women but everybody – are being addressed not only by women activists, but by many other organisations, public and private, local and foreign, which

²³⁰ Suggested by P. Ostien and M.J. Umaru in their essay on “Changes in the Law in the Sharia States Aimed at Suppressing Social Vices”, Part II *supra*, pp. 45-46, 52 and 74.

see the need of improvement of so many aspects of Nigerian life and are willing to spend money to try and help. I mention briefly a few of these:

The need to improve the quality of the Sharia Courts and of the justice administered in them – along with the Area Courts and the Customary Courts in other parts of the country as well – is widely recognised. Most people agree that much more money needs to be invested in this crucial segment of the justice system (which bears a huge percentage of the load of litigation), in terms not only of better education and better pay for the judges, but better working conditions, better equipment, better court staffs, better administrative systems, and so forth. The problem is to persuade politicians to allocate sufficient funds to do all these things or even to begin to tackle them. This subject is meant to be discussed further in two forthcoming chapters of this work, one on “Court Reorganisation” and one on “The Judges of the Sharia Courts”.

Some access to justice issues are being addressed in a programme sponsored by the British Counsel and DFID: The Access to Justice Programme Nigeria, see <http://www.gsdc.org/go/topic-guides/justice/safety-security-and-access-to-justice>. One of the three or four States in which this programme is at work is Jigawa State – a Sharia State – where, according to the website, two sub-programmes are going on: one on “Land Rights of Women and the Poor in Jigawa State”, and one on “Resolution of Civil Disputes in Jigawa State”. Presumably these are meant to be pilot studies, with the hope of exporting to other States programmes that work well to bring about progress.

There has been a programme on at the Centre for Islamic Legal Studies, ABU Zaria (CILS), to harmonise the Sharia Penal Codes and Sharia Criminal Procedure Codes that have been adopted in the Sharia States. At the moment they are quite different from State to State, especially the Sharia Penal Codes – this is documented in detail in Chapters 4 and 5 of this work. The harmonisation project is not universally approved of and does not seem to be getting very far.²³¹ As far as I know no one is really talking about repealing §55 of the Penal Code or its equivalents in the Sharia Penal Codes.

CILS has also worked with DFID to produce the excellent publication already referred to, *Promoting Women's Rights Through Sharia in Northern Nigeria*.²³² This has chapters covering: Practices relating to the girl-child; Marriage and marital relationships; Divorce; The custody of children after divorce; Economic rights; Inheritance; Property ownership; Access to health and reproductive health services; Political participation; Access to justice; and Criminal justice. Under many sub-headings, as, for instance, “Education of the girl-child”, a problem is articulated, as, “According to the literature, the right of a girl to education has often been violated in the North.” The problem is further discussed and then there is a discussion of “What Sharia says”, as, “In Islam, parents are responsible for providing education and training to their children. Denying this is against Sharia, which expects both men and women to be equally educated”, referring to appropriate authorities. This publication will be an excellent tool in the effort to overcome age-old biases and prejudices among the men and ignorance among the women.

²³¹ See Chapter 4, 20-21.

²³² See n. 173 supra.

The improvement of education in the North generally, and of girls' education in particular, has been widely supported and pursued, with the State Governments in the lead, supported by the Federal Government and by international organisations such as the World Bank and UNICEF. Northern religious leaders, including many prominent Emirs and *ulama*, have also spoken out about the dire need to provide much larger percentages of the North's children, including the girls, with much better educations, ideally combining Western with Islamic or other religious education. Let me illustrate with just one bit of news from Kano:

The Kano State Government has commenced integration of the State's modern educational system into the 26,000 Qur'anic education residential schools existing in the State, the Governor says. Qur'anic schools have existed in Kano for over 700 years and have produced thousands of literate citizens with high moral values that have contributed to the development of their society; but now introduction of Western education is necessary for national socioeconomic transformation and development. But it will take decades.²³³

A lot of money has been spent, on refurbishing school buildings, building new ones, school furniture, school books, more teachers, better conditions for teachers, and so on. One has the impression, though, that what is actually being accomplished so far is only reaching small percentages of the children: with over 17 million Muslim children under fifteen years of age, 8.5 million of them girls, scattered over such wide rural spaces where there are few amenities, how could it be otherwise? It is not only impossible to find enough qualified teachers to teach all these children, but even if they could be found, the teachers are not paid enough money to attract and hold them: it is not seldom that one hears of the elementary school teachers in some State going for months without being paid at all. So the North still has a long way to go to bring its educational systems up to even minimal standards of acceptability.

No doubt many other things are going on out there to try and improve the lives of women along with everyone else. But enough has been said to give the reader an impression of the kinds of efforts being made and of the difficulties confronting them. To conclude this section let me just recount a few of the positive comments we heard in our interviews with people in the Sharia States.

Mrs. Anna J. Wali, Lecturer, Katsina State Polytechnic; Financial Secretary, WRAPA, Katsina State.²³⁴ Women view Sharia as a good thing because it makes their husbands to live up to their family responsibilities of providing maintenance. Sharia has liberated women... [and going on to discuss the work of WRAPA in Katsina State].

Hajiya Amina Maude, Director of Women Affairs at the Ministry of Women Affairs and Social Development, Kano State:²³⁵ Women were initially apprehensive that Sharia was going to be disadvantageous to them. Later on however, they came to realise that if Sharia is fully and correctly implemented, it would be in their interest. For example, women's rights would be restored, husbands would become more alert to their family

²³³ *New Nigerian*, 15th August 2005, 43.

²³⁴ Interviewed in Katsina, 20th February 2003, by M. Gaiya, S. Fwatshak and R. Awal.

²³⁵ Interviewed in Kano, 12th March 2003, by M. Gaiya, S. Fwatshak, K.A. Umar.

responsibilities – and so they were happy with it. The implementation of Sharia has led to the revival of traditional methods of conflict/dispute resolution. The ward heads, the district heads and emirs handle family problems before they go to the Social Welfare office if the need arises.

Musa Isa Lapai, Secretary, Niger State Sharia Commission. Before Sharia many people used to squander their salaries and did not take care of their families. Now many women have come back to thank the Commission for implementing Sharia such that their husbands take their responsibilities seriously.²³⁶

4. Changes in the law affecting girls and women.

It must be said that next to the serious concerns we have just been discussing, many of the women-related measures enacted into law as part of the official Sharia implementation agenda seem trivial by comparison. To conclude this essay I next discuss a number of the new measures. The new laws themselves are presented in full in Part IV of this chapter, to which frequent reference will be made.

a. Women's dressing. One Sharia State has in fact enacted a law on how Muslim women are to dress – this is Yobe State, in its Prohibition of un-Islamic Dressing Law 2000, "A Law to Provide for the Prohibition of un-Islamic Dressing in the State and to Make Provision for Proper Dressing to Be Used by Female Muslims Throughout Yobe State". The law is reprinted in full in Part IV.6.c of this chapter. Its core provisions are interesting enough to quote again here:

3. (1) This Law shall apply to all female Muslims of ten years and above throughout the State.
(2) This Law shall not apply to such female Muslims when they are within their homes or when exclusively among females away from the view of men.
4. As from the commencement of this Law, un-Islamic dressing is prohibited in the State.
5. The proper dressing shall be that which covers the entire body of the women except her face and palms up to the wrist or *hijab* or *lifaya*.²³⁷
6. (1) Any person who contravenes the provision of this Law shall be guilty of an offence and liable on conviction to a fine of one thousand naira or one month imprisonment.
(2) Where the convict is a minor his parent or guardian shall be liable for the penalty provided by this section.
7. (1) As from the commencement of this Law all authorities in charge of schools in the State shall ensure that the school uniform substantially conforms with the provisions of this Law.
(2) Students who fail to comply with the decision of the school authority in respect of this Law shall be given appropriate punishment by the school authority

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²³⁶ Interviewed in Minna, 29th November 2005, by S. Fwatshak and S.H. Liman.

²³⁷ *Lifaya*: light outer wrap worn especially by Kanuri women. Like the *gyale* but larger.

10. Prosecution is at the instance of the Attorney-General and the police.
11. (1) For purposes of decency, it is required that non-Muslims should dress decently.
- (2) Non-Muslims shall not be liable for punishment under this Law.

So non-Muslims are exempt, although they are still supposed to dress “decently”; but even if (in somebody’s opinion) they don’t, they are not subject to punishment under this law or probably any other. As to Muslims, the *hijab* requirement is imposed on “all female Muslims of 10 years and above”, except “when they are within their homes or when exclusively among females away from the view of men.” The requirement must be enforced on minors by their parents and guardians and on schoolchildren by the school authorities. As against adults who do not live up to their obligations under the law, either as Muslim women, as parents, or as school authorities, “Prosecution is at the instance of the Attorney-General and the police”, which is not likely to happen very often. Perhaps the real intendment of this law is to start the girls young wearing the *hijab*, and trust that as they grow older they will continue. Probably it is working quite well to bring that about.

The 2004 Human Rights Watch report “Political Sharia? Human Rights and Islamic Law in Northern Nigeria”,²³⁸ at p. 67, cites a “Certain Consequential Reform (Socio-Economic, Moral, Religious and Cultural) Law 2001, allegedly enacted by Zamfara State, which contains a provision saying “Every female of Islamic faith shall put on dress to cover her entire body except for her feet, hand and face in the public or while attending the office both within or outside the State.” Our documentation project visited Zamfara State many times but never ran across this law; it was perhaps somebody’s draft, never enacted.

The documentation project did turn up one Local Government Council that has enacted a *hijab* requirement – Fika Local Government, also in Yobe State. In its interesting 2002 bye-law on miscellaneous un-Islamic practices, see Part IV.8.d below, the following is included as §11:

It shall be an offence for any Muslim female above the age of ten to move round within the Local Government Area at any time without wearing a *hijab* adequate to cover her head down to her toes.

Possibly other Local Governments have enacted similar bye-laws, I do not know because our project was not able to visit all Local Governments to try and collect their Sharia-related legislation.

Even where no law requires the wearing of the *hijab*, its wearing is often becoming “compulsory” as Hauwa Mahdi has said – through regulations governing State institutions, including schools; and outside such institutions through quasi-official pressure exerted by the *hisbah* organisations. The Human Rights Watch report just referred to discusses this quite fully and gives interesting instances from several States – including one from Bauchi State involving twenty-one Christian nurses suspended from their jobs at a Federal Medical Centre for refusing to wear the *hijab*, an aberration in

²³⁸ September 2004 Vol. 16, No. 9(A), available at www.hrw.org/reports/2004/nigeria0904/nigeria0904.pdf.

many ways that is not likely to be repeated.²³⁹ To the HRW stories let me add a few more (a review of the newspapers would add many more to these).

From Zamfara State:

- February 2004: the Zamfara State Governor announced a dress code for female Corpers. This was necessitated by a series of complaints about indecent dressing by Corpers. [Corpers are young people just graduated from the universities, doing a year's service in the National Youth Service Corps.]²⁴⁰
- February 2005: the Zamfara State Governor introduced a new dress code for the State's cultural troupe to be sure they comply with Sharia. The troupe will not be allowed to dance or sing any more but will be allowed to do drama, focusing on the promotion of Sharia itself, religious harmony and tolerance in addition to promoting national cohesion and integration.²⁴¹
- February 2006: the Chairman of the Zamfara State Hisbah Board said, as to indecent dressing: the *hisbah* do arrest women engaged in indecent dressing. They sometimes take offenders to court.²⁴²

From Niger State:

- November 2005: an official of the Niger State Ministry of Justice says that with the introduction of the *hisbah*, indecent dressing by women is being checked at public places. Women dressed indecently and those who appear to be soliciting are also turned away at the gates.²⁴³

From Kano State:

- March 2003: the Director of Women Affairs at the Kano State Ministry of Women Affairs and Social Development says that the various Islamic sects in Kano are not yet agreed on what dress code should apply to women. Thus, women are now free to wear either the *hijab* or veil (*gyale*), so long as the essential parts of the body required by Islam are covered. Majority of Kano women are Muslims and have been used to decent dressing anyway.²⁴⁴
- July 2005: heads of tertiary institutions of learning in Kano State have been directed by Governor Shekarau to enforce the appropriate dress code on their students to save them from being visited by the Sharia police (*hisbah*). This directive was given as Shekarau inaugurated the State Hisbah Committee. "The Kano State Government will not condone any act of indecent dressing that

²³⁹ Ibid., 66-68.

²⁴⁰ *The Guardian*, 2nd February 2004 (page number lost).

²⁴¹ *New Nigerian*, 2nd February 2005, 19.

²⁴² Interview with Engr. Sanusi Muh'd K/ Kwashi, Chairman of the Zamfara State Hisbah Board, Gusau, 9th February 2006, by S. Mohammed and A. Garba. It is not clear under what law violators would be taken to court, but see n. 238 supra and accompanying text.

²⁴³ Interview with Barr. Sanusi of the Niger State Ministry of Justice, Minna, 28th November 2005, by S. Fwatshak and S.H. Liman.

²⁴⁴ Interview with Hajiya Amina Maude, Kano, 12th March 2003, by M. Gaiya, S. Fwatshak and K.A. Umar.

exposes the nudity of any person. Right now, the 9,000 *hisbah* members have been given the powers to monitor all parts of the State and arrest Sharia violators.” Shekarau said that neither Islam nor Christianity condoned indecent dressing, drunkenness, womanising, prostitution or gambling.²⁴⁵

- August 2007: in a full-page advertorial the Kano State Government responds to news reports that the Northern Chapter of the Christian Association of Nigeria (CAN) is accusing it of “planning to announce a policy to force non-Muslim female students to wear *hijab*, among others.” The Government expresses sadness that CAN makes such statements based on rumours, without bothering to check with the Government first. In fact it has long been the rule that all female Muslim students in public schools must wear the *hijab*. But the rule does not apply to non-Muslims: they are only directed to dress decently. The new measure now is that the Government has decided to extend the *hijab* rule beyond the public schools, to the private schools in which increasing numbers of Muslim students are enrolling. At least the proprietors of private schools will be required to *allow* female Muslims to wear the *hijab*. Requesting students to dress decently is not exclusive to Kano State. “[E]ven universities and other tertiary institutions, including those located in non-Muslim communities as well as religious organisations now impose dress codes for their female students, emphasising decency and self-respect. ... Education is all about discipline and morality, and the purpose of sending our children and wards to schools will surely be defeated if we cannot instil into their young minds the discipline of decent dressing and general good conduct. The Kano State Government is committed to instilling a morally right dress code among its students and therefore expects Northern CAN and indeed all well-meaning organisations to join hands to stamp out immorality and indiscipline in our schools and society. Acting on rumour and cheap religious sentiments will not help us in our struggle for a united Nigeria.”²⁴⁶

And so the discussion goes on.

b. Females using commercial transportation. The imposition of the *hijab* is part of the campaign to keep unrelated men and women separated from one another so that the question of illicit sexual attraction will not even arise. It is interesting that Kano State, in its Cinematography Licensing Regulations (see Part IV.7.d *infra*) explicitly uses the term *hijab* in this sense:

69. (1) The admission of females [and] males in a cinema auditorium is prohibited except where the auditorium for film exhibition is partitioned for males and females respectively.
- (2) A partition in this regulation means a *hijab* or separation of the auditorium for males and females.

Another aspect of the campaign to separate the sexes has been the effort to stop females from riding on commercial motorcycles driven invariably by men, mostly young ones,

²⁴⁵ *The Guardian*, 5th July 2005, 3.

²⁴⁶ *Daily Trust*, 13th August 2007, 25.

and to stop females from sitting in close proximity to unrelated men in taxis and buses. Probably several Local Governments have enacted laws on this subject. The one the documentation project collected is from the Gusau Local Government of Zamfara State: from July 2000, "A Bye-Law to Curb, Control and Eradicate Anti-Social Behaviours, Moral Decadence and Other Vices in the Society", which in fact deals exclusively with commercial motorcycles, known as *kabu-kabu* or *achaba*. The laws appears in full in Part IV.6.d below; here are its crucial provisions:

4. The conveying of any person of the opposite sex for the purpose of transporting same to any destination by a "*kabu-kabu*" operator is hereby prohibited. This prohibition does not apply to any person who conveys his or her relation of the opposite sex for the purpose of transporting same to any destination.

5. The prohibition stated in article 4 of this Bye-Law shall only apply against any person who professes the Islamic faith.

* * *

7. Whoever violates the provisions of article 4 of this Bye-Law shall be guilty of an offence and liable to 20 lashes of the cane and shall have the motor-cycle detained for a period of two weeks in addition to the cancellation of the licence to operate the motor-cycle as *kabu-kabu* for a period not exceeding three months.

The only State²⁴⁷ to have enacted similar legislation is Kano, in its 2005 amendment to its Road Traffic Law (reproduced in full in Part IV.6.e below): here are the crucial provisions:

44. (1) All commercial vehicles shall reserve a reasonable number of seats at the back in the vehicle for female passengers only.

(2) Any motor vehicle driver who carries male and female passengers mixed together in a manner which is offensive to the Sharia shall on conviction pay a fine of not less than ₦5,000.00 or be barred from driving any vehicle for a period which may extend to six months or ten strokes of the cane.

45. (1) Any motorcyclist who:

- (a) carries any female as a paying passenger;
- (b) carries more than one person;
- (c) overtakes any vehicle on the right hand side;
- (d) uses a motor vehicle horn on his motorcycle; or
- (e) does anything that hampers the smooth flow of traffic on any public way,

²⁴⁷ Again the Human Rights Watch report referred to earlier disagrees with the word 'only', again referring, at p. 65, to the "Certain Consequential Reform (Socio-Economic, Moral, Religious and Cultural) Law 2001", allegedly enacted by Zamfara State, which is said to include a section on "commuting by opposite sexes in public transport systems". HRW discusses various reports about enforcement of such laws at 65-66.

shall be guilty of an offence and upon conviction be liable to a fine of not less than ₦5,000.00 or be barred from driving any vehicle for a period which may extend to six months.

(2) Any tricyclist who chooses to carry male passengers shall not carry any female as a passenger, and where he chooses to carry female passengers shall also not carry any male passengers.

(3) Nothing in subsection (2) of this section shall preclude any person from being accompanied by a minor of 12 years of age and below and/or a *mubarrami*.

(4) In this section *mubarrami* means a person related to another in which the Sharia does not allow marriage between them.

These sorts of rules were also sometimes imposed by executive fiat: for instance, among the first things Governor Sani of Zamfara State did was to impose a ban (under what authority is not clear) on women travelling in the same taxis as men, or using *achaba*. “If you come to Zamfara State as a lady, as a Muslim woman or a Christian or whatever, we have taxis provided by the State [ladies only] which are to be used.”²⁴⁸ Again, *bisbab* groups in some places have also exerted semi-official pressure to try to enforce such rules, even where not backed by any law or official pronouncement. For instance in Bauchi State some early attempts were made to enforce separation of male and female passengers in taxis and buses; but these quickly collapsed.²⁴⁹ No doubt the same thing happened in other places as well.

The practical problem with all these rules is that they interfere with the lives and livelihoods of two large classes of people, most of them Muslims: the impoverished drivers of *achaba*, taxis and buses, who work long hours for minimal pay, and the equally impoverished women, without other means of transportation, who are among their principal customers. Notwithstanding the efforts of some States to provide “tricycles” for women to use – with a separate closed-in compartment behind the driver for two or three passengers – the demand of women for ad hoc transport far exceeds the supply of tricycles; and the rules mandating separation of the sexes in other commercial transportation have proved impossible to enforce. Kano tried, with unhappy results. Its Road Traffic Law amendments, quoted above, were enacted in May 2005. In November 2005 the Chairman of the Kano *bisbab*, Sheikh Farouk Chedi, said that enforcement would start as from 12th December 2005.²⁵⁰ It did, and serious problems ensued, including several episodes of fighting between the *achaba* drivers and the *bisbab*. These disturbances, no doubt among other considerations, led Federal Government to ban the Kano *bisbab* and arrest its Chairman.

On the news of the arrest of Sheik Chedi several [*achaba* drivers] were seen jubilating: “We expected the action. It came at the right time. These *bisbab* guards started behaving as if they were laws unto themselves. They stopped us

²⁴⁸ Quoted in *TELL*, 15th November 1999, 20. Governor Sani also says in this interview that his State’s primary and secondary schools have been segregated by sex.

²⁴⁹ Interview with Kefas Magaji, Bauchi, 17th February 2003, by D. Gwamna and K.A. Umar.

²⁵⁰ Interview with Sheikh Farouk Chedi, Kano, 28th November 2005, by S. Mohammed and A. Garba.

from carrying women; they seized our motorcycles and even made us pay fines ranging from ₦3,000 to ₦5,000. We never expected them to do this to us. Their action in recent times affected our means of livelihood. That is why you see us fighting them in various parts of the town.”²⁵¹

The *bisbab* were not right away deterred:

Defying the Federal Government's directive, members of Kano *bisbab* at the weekend returned to the streets of Kano. They clashed with commercial motorcyclists scores of times when they tried to enforce the no gender-mixing rule sanctioned by the State Government recently. Governor Shekarau had ordered the *bisbab* to return to their duty posts. Scores of policemen were sighted patrolling the streets of Kano apparently to contain tension. Sermons delivered by clerics called for restraint on the part of Muslims to avoid breakdown of law and order.²⁵²

Things did calm down – because attempts to enforce the rules were quickly abandoned. Up to today one sees women, often wearing *hijab*, using *achaba* and sharing taxis and buses with men all over the North. But the efforts to stop it continue, as this very late news from Katsina indicates:

Women in Katsina State may in no time get an alternative transportation system as the State is planning to ban them from plying on commercial motorcycles popularly known as *achaba*. ... The ban, which is prompted by a visit to the Assembly by the chapter Chairman of the Supreme Council of Islamic Affairs, Sheikh Yakubu Musa Hassan, was however subject to the provision of alternative means of transportation by the State Government. The sponsor of the motion and member representing Kurfi Local Government Area ... said it is improper and contrary to the religious norms and traditions of the State for women to be transported by men on commercial motorcycles. He said: “Most married women, especially the pregnant ones were forced to hire this motorcycle to the hospital, market, and other public places with the high risk of being thrown out on the road or get involved in accident.” ... [T]he State Assembly has resolved to refer the matter to the House Committee on Transportation for action and report back to the Committee of the Whole House in two weeks.²⁵³

This gives some insight into the organisations promoting these particular rules, and some of the arguments they are using. It will be interesting to see how it develops.

c. Hawking by young girls. Another part of separating males from females is the attempt to put a stop to hawking by girls. As we have already seen this has been a matter of concern in the North for some time. As part of Sharia implementation, two additional States have enacted hawking bans. Kebbi State made an entire law on the subject, its 2000 “Law to Prohibit Female Hawking in the State and Others Connected Therewith”, see Part IV.7.b. Yobe State included its ban in its “Law for the Prohibition of

²⁵¹ *The Guardian*, 10th February 2006, 1-2.

²⁵² *The Guardian*, 12th February 2006, 3.

²⁵³ *Daily Trust*, 31st August 2007, 6.

Prostitution and Other un-Islamic Practices, Including Cinematographic Exhibitions, Production and Sale of Liquor, and Other Matters Related Thereto”, see Part IV.1.b §18. And then some Local Governments have also enacted bye-laws including hawking bans, documented in Part IV.1.e with the “Law to Prohibit and Eradicate Prostitution, Gambling, Games of Chance and Other Forms and Sources of Social Vices and Moral Decadence in the [Local Government Area]”, §§13-15, enacted in 2000 by the Gusau Local Government Council in Zamfara State. Kano has started a project, *Fansar ’yan mata ’yan talla*, trying to abate street hawking by young girls, presumably in renewed efforts at enforcement of its 1988 law on this subject.²⁵⁴ It is interesting to see hawking associated so persistently with social vice and moral decadence; evidently this is the case. As we have seen it also keeps young girls out of school. This is probably a practice that will only finally dry up when all young girls are kept in school for a great deal more of the time than they are now – which, besides keeping them off the streets and out of the clutches of wicked men, will improve their lives in many other ways as well. But up till now, as I have already said, one still sees many young girls hawking their wares around on their heads in most parts of the North.

d. Other mixing of males and females. There has been some attempt to stop social mixing by men and women – quite common and much enjoyed in the North at naming ceremonies, wedding parties and political events, among others. The Fika Local Government of Yobe State, whose 2002 bye-law on miscellaneous un-Islamic practices has already been quoted on the subject of the *hijab*, has this provision as well:

5. (1) It shall be an offence for a person or group of persons to encourage or engage in *ajo*, *koroso*²⁵⁵ and other forms of public entertainment in which men and women intermingle in an indecent and un-Islamic manner be it in the form of dancing, drumming, singing, music, beauty contest, fashion parade and the like.
- (2) Whoever, being a Muslim encourages or engages in *ajo*, *koroso* and other forms of public entertainment prohibited in sub-section (1) above shall be punished with 1 months imprisonment or ₦2,000.00 fine.

* * *

8. Any alkali or person authorised by him (i.e. *hisbah*) and any police may:
 - (a) Enter any premises at any time for the purpose of detecting or preventing any breach of the provisions of this Bye-Law within the Local Government Area.
 - (b) All laws that protect the police in the cause of his duty shall also be applicable to *hisbah* for the purpose of enforcing this Sharia Bye-Law within the Local Government Area.

The laws restricting the festivities at marriage and naming ceremonies, discussed further in the next subsection on cutting down the costs of getting married, perhaps have this purpose also, of cutting down on the attraction for mixed companies of men and women

²⁵⁴ *New Nigerian*, 17th May 2005, 1; for the 1988 law see n. 175 supra.

²⁵⁵ *Ajo*: donations made to the bride and groom during marriage ceremonies; the festive occasion at which the donations are made. *Koroso*: lit: the jingling anklets of dancers; the dancers and the dance.

to come together in a party mood. The following provisions, from the Gummi Local Government Area of Zamfara State,²⁵⁶ give some indication:

2. This Bye-Law shall come into operation on a day to be appointed by the Council Chairman.
 - (i) All forms of procession during wedding and naming festivities are hereby prohibited as set-out in the schedule hereto.
 - (ii) Save in absolute necessity no motorcyclist shall commute female passenger between the hours of 10:00 p.m. – 6.00 a.m. throughout the Local Government Area.
 - (iii) All types of musical concerts during naming and wedding festivities as set out in the schedule are hereby prohibited throughout the Local Government.
 - (iv) Any other expenses during naming and wedding ceremonies as set out in the schedule hereto.
3. Any person who contravenes any provision of this Bye-Law shall be liable to a fine of three thousand naira (₦3,000.00) or six months imprisonment or both.
4. Residents of the area/ward and village concerned or member(s) of the Islamic Joint Aid Group may report either to the police or the Local Government or lay a complaint before the court of law.

Besides these Local Government enactments, of which there are probably more, some State Governments have tried to take action from the top, through edicts – whose force is quite unclear – issued by officials of the Government. The following items from Katsina State are indicative of this; they also show how unwelcome the puritanism of some *ulama* is in many parts of the North:

Initially, the government-appointed Katsina State Sharia 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. In the second case, the renowned traditional Hausa musician Sirajo Asharalle was pardoned after he promised never to play at weddings again. In August 2001, however, the Sharia Commission lifted the ban on performing music. The commission directed “that singing and drumming [are] desirable at wedding, Id prayers and circumcision ceremonies, and [can] also take place during wars or while welcoming a fellow Moslem from a trip.”²⁵⁷

This episode seems to have involved some sort of *fatwa* issued by the Sharia Commission, somehow enforced by the courts, until the *fatwa* was completely reversed some time later. It would be interesting to know about the whole thing in more detail, including under what law the musicians were prosecuted. Some further explanation was

²⁵⁶ Gummi Local Government (Zamfara State) law on processions, musical concerts, other expenses during naming and wedding ceremonies, etc. (2000), Part IV.8.b *infra*.

²⁵⁷ G. Weimann, “Judicial Practice in Islamic Criminal Law in Nigeria 2000 to 2004 – A Tentative Overview”, *Islamic Law & Society*, 14/2 (2007), 260 (footnotes omitted).

gotten in 2005, in an interview with Sheikh Yakubu Musa Kafanchan, the founder of the *hisbah* movement in Katsina:

The issue of prohibiting dancing and traditional music in the State was one issue that generated a lot of controversy. The Governor²⁵⁸ does not in any way fall in any love with any attempt let alone by law to prohibit that in the State. During the weddings of his children, so many traditional dancers were invited. It was during that time that the then-Grand Kadi [ex officio also the Chairman of the Sharia Commission] made a pronouncement in writing legitimising dance and music in the State. This Grand Kadi went to the extent of saying that any marriage celebrated without music and dance is incomplete, and invalid under Islam.²⁵⁹

So the partying continues in Katsina.

There is also the case of Governor Ahmad Sani of Zamfara State, who, like the Sharia Commission of Katsina State, seems also to have changed his opinions in this area. In 2001 the Governor hosted President Obasanjo on a visit to the State. The President and the Governor were of different parties – the President of the People’s Democratic Party (PDP), the Governor of the All Nigeria People’s Party (ANPP). Perhaps fearing a large turnout-of PDP supporters when the President came to visit, the State Government announced on the radio that

women would not be allowed to greet or talk to the President. “Zamfara is a Sharia State and the Sharia prohibits any mingling of men and women. So for this reason, no woman should come out to welcome the President,” he said. Normally, large crowds of men and women greet the President when he visits anywhere in the country, and present any grievances they might have. Asked how women could present any possible grievances to the President, [the Government spokesman] said this would be done on their behalf by the men of the State Government. “The State Government is the father of all. Therefore, whatever problems they have, the State Government will forward it on their behalf,” he said.²⁶⁰

But large numbers of women came out the next day to greet the President anyway, in spite of the ban:

Hundreds of women in Zamfara State on Thursday defied Gov. Ahmad Sani’s order, banning them from coming out from their purdah homes to welcome President Olusegun Obasanjo.... The women...started trooping out en-masse as early as 8 a.m. to take a vintage position to have a glimpse of the President. Women politicians, especially from the opposition Peoples Democratic Party (PDP), also trooped out, wearing attire signifying their party symbols. The attire worn by the women, was made of white buba with red and black headscarf. They were chanting the PDP slogan and saying “PDP, Power! Power!!

²⁵⁸ Umaru Musa Yar’Adua, elected President of the Federal Republic in 2007.

²⁵⁹ Interview with Sheikh Yakubu Musa Kafanchan, Katsina, 9th December 2005, by S. Mohammed and A. Garba.

²⁶⁰ *Vanguard*, 15th September 2001, internet edition.

Power!!!". Reacting to the Governor's order banning women from welcoming the President, a female gubernatorial aspirant in Zamfara State, Hajiya Hassatu Marshal, described the order as illegal and an infringement of the fundamental human rights of the women. Marshal maintained that President Obasanjo was the President for all Nigerians and not for men only, adding that when the politicians were looking for votes...they mobilised women to win their seats and now that they are in power, the womenfolk have been forgotten.²⁶¹

In short, the conservative *ulama* – and politicians who try to use Sharia for their own purposes – do not have it all their own way. And then, when he himself was running for President, several years later, Governor Sani and his wife staged their own extravaganza: here is a summary of what the leader of the opposition had to say about that:

Zamfara PDP Chairman, Alh. Samaila Garkuwa, says Gov. Ahmad Sani is reckless; he is turning Government's business in to a joke and forgetting about the tenets of Sharia. He spent ₦1 million and donated 63 cars to musicians from Niger Republic who came to play at the inauguration of the Women's Wing of his 2007 presidential campaign organisation on 14th January 2006. The PDP Chairman says that Sharia forbids such public frolicking, as the law bans such immoral activities, including drumming and singing. "Several *ulamas* have condemned this wanton depravity, with one saying that what is happening in the State now is an insult to both Islam and Muslims the world over... It will take a lot to undo this bad example that Yarima and his family have set yet again", the statement said. The Chairman further alleged that during the inauguration, the Governor's wife, wives and children of State commissioners, legislators, permanent secretaries, special advisers, local council chairmen and traditional rulers present, lost all decorum and danced until they forgot to say their *zuhr* prayer on time. "And the First Lady, Dr. Karima, joined in the public merry-making to the extent that she and others were spraying the musicians with the top denominations of the naira", the statement went on. The Chairman said that in obedience to the Sharia tenets, the PDP was demanding that those who participated in that merriment be public reprimanded....²⁶²

– Thus demonstrating that the mantle of Sharia can be assumed by any politician whenever it is convenient. It is only fair to add that Governor Sani subsequently denied giving out any cars, and denied that the celebration was contrary to Sharia, implying that he had cleared it with his Council of Ulama first.²⁶³ However that may be, the real lesson of this subsection is perhaps that the puritanism of some *ulama* about the social mixing of males and females at party-like events where there is music-making and dancing, is not shared by many of the North's Muslims, with whose customs it clashes; and it seems unlikely that this sort of puritanism will win out in very many places or for a very long time.

e. Reducing the costs of marriage. Finally, a bit of information on containing the costs of getting married, which always seem to be going up. This has been a problem for

²⁶¹ *Vanguard*, 16th September 2001, internet edition.

²⁶² *The Guardian*, 20th January 2006, 7.

²⁶³ Reported in *New Nigerian*, 24th January 2006, 4.

a long time, as we can see from the fact that as far back as the 1980s some States were trying to address it through legislation: Sokoto in 1981, Kano in 1988, and perhaps there were others, it has not been possible to check the laws of all the Sharia States.²⁶⁴ Concern about the problem was expressed at the time Sharia implementation was first being discussed:

“Government should readdress the issue of marriage in our society today with a view to eradicating certain negative innovations...” “[H]igh financial demands...contribute towards the accumulation of so many unmarried youths. These...have become used to visiting prostitutes in brothels, and the women on the other hand are there in high numbers with nobody to marry them...” “During marriage contract the suitor shall pay only *sadaq* (dowry) to the bride in accordance with the Sunnah. Payment of all forms of levies and other traditional gifts such as *kudin mai unguwa*, *kudin ’yan banga*, *kudin tobassai*²⁶⁵ etc. should be made illegal and punishable under the law.” “[A] law [should be made] against extravagance during marriage celebrations that is, like inviting traditional singers and dancers and showering money on them.”²⁶⁶

Again, in 2005

A member of the Kaduna State House of Assembly has raised alarm over the increasing number of unmarried girls in the northern part of the country. He spoke at the Kaduna chapter of the Qur’anic Recitation Competition in Kaduna. The increasing number of unmarried girls and divorcees roaming the streets is alarming. He appealed to Muslims with only one wife to marry more to reduce the numbers...²⁶⁷

The only Sharia State that has enacted new legislation on this subject is Bauchi State, which has added the following new provision to its Sharia Penal Code (applicable to Muslims only), see Part IV.8.c:

376A. Any person who in any street or place of public resort or within sight or hearing of any person or in any social, public or private ceremony, engages in praise singing (*roko*), begging (*bara*), playing cards (*karta*), *wasan wuta*, *wasan wuka*, *wasan bori*, etc.²⁶⁸ is guilty of an offence and liable on conviction to

²⁶⁴ See Sokoto Marriages (Customary Practices) Control Law 1981 and 1992, Cap. 90 Laws 1996; Kano Marriage (Customary Practices Control) Edict 1988, Cap. 91 Laws 1991; and Jigawa inherited Kano’s law, see Jigawa Marriage (Expenses Control) Law, Cap. 94 Laws of 1998.

²⁶⁵ Money for the District Head, for the voluntary security groups, and for a third purpose which we have not been able to identify.

²⁶⁶ Quoted from the Sharia Implementation Committee materials in Chapter 2: 96, 86, 185, 30.

²⁶⁷ *New Nigerian*, 5th September 2005, 19.

²⁶⁸ *Wasa* = play, here, with various dangerous things (respectively snakes, hyenas, fire and knives), under the guise of protection by charms or other supernatural powers, for whatever the on-lookers may be willing to donate. Crowds are frequently attracted; *boka* or “malams” ply their trade in charms, fortune-telling and traditional medicines; and thieves and pick-pockets operate. *Wasan bori* is more directly associated with the cult of spirit-possession: the devotee by incantations and turning in a circular dance achieves a state of possession in which he/she performs various feats before passing out. This is usually not for public consumption, but only for members or potential members of the cult.

imprisonment for a term which may extend to one year and a fine of not less than ₦5,000.00 and shall also be liable to caning to twenty lashes.

I do not know if anyone has ever been prosecuted under this law. Then two Local Government Areas have enacted similar legislation: the provisions of the Gummi Local Government Area law on processions, musical concerts, other expenses during naming and wedding ceremonies, etc., have already been quoted; and see the Kaura Namoda Local Government (Zamfara State) ban on

All forms of procession during marriage, naming or any other ceremonies by motorcyclists (*kabu-kabu* operators) whether it was preceded with conveyance of members of the opposite sex or not, is hereby prohibited throughout the Local Government Area.²⁶⁹

It may be that other Local Governments have done similar things. Some State and Local Governments also take less formal steps to enable poor people to acquire the means to get married, as the following news item from Katsina State indicates: the piece also sheds more light on the work of *da'awah* groups:

22 motorcycles and 150 bicycles have been distributed to the Katsina State Da'awah Committee, as part of State Government efforts to ensure that the Sharia legal system is fully entrenched in the State. Various schemes have been introduced to enhance the welfare of new converts to Islam, including first aid, soft loans, educating new converts from primary up to university level. Women *da'awah* committees are to be formed. Workshops and seminars will soon be convened for Islamic instructors for them. The Chairman of the Katsina State Da'awah Committee, Malam Salisu Abdullahi Bakori, revealed that during the month of Ramadan 191 persons have converted to Islam in the State. About 26 girls were sponsored for marriages and thanked the Governor for supporting *da'awah* committees in the State.²⁷⁰

5. Conclusion.

This essay has been a survey of various matters related to my assignment, which was to write on "Sharia Implementation and Female Muslims in Nigeria's Sharia States". Let me conclude by simply stating some few generalisations that seem to me to arise from the survey that has been made.

The situation is very complex. There are many different variously overlapping groups and sub-groups of female Muslims in Nigeria's Sharia States, variously affected by and taking various stances towards Sharia implementation.

Most Muslim women do not feel particularly oppressed by Sharia implementation most of the time, except where it has attempted to impinge on their livelihoods and

²⁶⁹ Kaura Namoda Local Government (Zamfara State) bye-law on liquor, prostitution, gambling and other social vices (2001), Part IV.1.f *infra*.

²⁷⁰ *New Nigerian*, 22nd November 2005, 21. For another story about wedding expenses, including dowry, being paid by the State, in this case for reformed prostitutes, see Ostien and Umaru, "Changes in the Law", p. 56 *supra* n. 131.

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mobility and on their traditional modes of socialising and enjoyment. Some women think Sharia implementation has been good for them.

Most Muslim women activists are working within the Sharia implementation paradigm: trying to use the complexity and flexibility of the Islamic legal tradition to achieve more gender and social justice within Muslim families and communities. The enemy is “merely traditional practices” oppressive to women, which do not have – or should not have – the sanction of religion.

There is a lot of positive development in many directions.

But there is still a long way to go to achieve social justice in Nigeria – not only for females, but for all the people who suffer from poverty, disease, and especially from bad government.