Philip Ostien
Sharia Implementation in Northern Nigeria 1999-2006
A Sourcebook
Spectrum Books Limited, Ibadan, 2007, Volumes I – V, US$ 125, ISBN: 978-978-029-837-1

The recent reintroduction of the full-fledged implementation of the Shari'ah, barely five months into the beginning of the new civilian regime in May, 1999, in some Northern states of Nigeria, was greeted with conflicting reception. The euphoria that greeted its first proclamation in Zamfara State and later adoption by other eleven states in the North[1] was remarkably overwhelming. However, amidst this euphoric reception by the Nigerian Muslims was the strong resentment exhibited by the Nigerian Christians and some human rights activists particularly against the extension of the Shari'ah application to include its criminal domain. This resentment, unfortunately, snowballed into religious conflicts in some parts of the Northern states, one of which was the Kaduna mayhem where many lives were lost and valuable properties damaged. Commentators in favour of the Shari'ah implementation generally hinge their contention on the provisions of the 1999 Constitution[2] which in addition to recognising the application of the principles of Shari'ah in personal matters, also gives allowance to individual state assemblies to pass laws touching on criminal matters.[3] The adoption of the fuller version of the Islamic legal system coupled with its attendant outcry have attracted quite a number of legal and academic commentaries both within and without re-evaluating and scrutinizing amongst others the constitutional implication and legal viability of the Shari'ah as an alternative legal system and its compatibility with the secular structure of the Nigerian polity.[4]

The publication of the book under review cannot be more timeous particularly at this epoch-making period of Nigerian politics and also in view of the fact that none of the available writings surrounding the re-birth and implementation of the Shari'ah in the Northern States of Nigeria has painstakingly considered an in-depth evaluation. There is no doubt that an objective mind curiously seeking to properly comprehend the rationale behind the much debated Shari'ah proclamation will find this masterpiece as 'a reliable platform... on the basis of which further study, analysis, and debate about Sharia implementation... can proceed' (See *Ostien*, Vol. I, p. xiii). In a bid to achieve this objective, the compiler and editor of this magnus opus has divided it into five volumes with each of the volumes representing a chapter except

1 The list of the eleven states in the North of Nigeria that followed Zamfara State in the re-introduction of the complete Islamic criminal legal system are: Bauchi State, Bornu State, Gombe State, Jigawa Stata, Kaduna State, Kano State, Katsina State, Kebbi State, Niger State, Sokoto State and Yobe State.

2 See sections 4, 6, 277 and the Second Schedule of the 1999 Constitution of the Federal Republic of Nigeria.

3 *John Naber Paden*, Muslim Civic Cultures and Conflict Resolution. The Challenge of Democratic Federalism in Nigeria, Washington, D.C. 2005, p. 157.

4 See *Vincent Orlu Obisienunwo Nmehielle*, Sharia Law in the Northern States of Nigeria: To Implement or Not To Implement, the Constitutionality is the Question, Human Rights Quarterly 26 (2004), p. 733.

volume IV which has two chapters (chapters 4 and 5). In all, the book is made up of six chapters.

The first chapter of this book entitled *'historical background'* consists of very important historical details and records that were directly instrumental to the making of 'The Settlement of 1960' which eventually paved the way for the formal demise of the Islamic criminal juridical system in the North of Nigeria. This, perhaps, explains why *The Settlement of 1960* has often been and still perceived by considerable number of Northern Muslims of today as a wrong initiative taken by the past Northern Muslim leaders that must necessarily be corrected by Muslims of today. The documents are: the 1958 Report of the Panel of Jurists, Memorandum touching on the progress and problems of implementation of the 1958 Panel's recommendation, the 1962 Report of the Panel of Jurists, White Papers on the 1958 and 1962 Reports of Panel of Jurists respectively. All these documents, according to *Ostien*, have only been published for the very first time in this book. The enormous importance of bringing these reports to the full glare of publicity cannot be overemphasised particularly when one considers its research value for legal historical analysis. It will, in addition, serve as a useful tool to review and re-examine the exactitude of the view of some staunch critics of the shari'ah implementation whose arguments in most cases are devoid of this historical reality.[5] In the introductory part of chapter one, *Ostien* has, by way of questioning, challenged the conclusion of some commentators, mostly from amongst the Northern Muslims, who strongly believe that the decision to concede to the Settlement of 1960 was a great disservice to Islam and the Muslims. That it is not enough to castigate the Settlement of 1960; its initiators; and supporters, it is equally important to ponder on the whereabouts and non-availability of details and documentations relating to: the circumstances under which the *Sardauna*[6] and members of his caucus were operating; the enormity of pressures emanating from leaders of the Eastern and Western regions along with the grand influence of the British colonial masters which they had to contend with; the available options from which they had to choose considering, at the same time, the benefits or otherwise of the Settlement to the Northern region and its Muslim inhabitants; and various reports of the delegations despatched to Sudan, Libya and Pakistan in 1958 and details of interactions and negotiations between the drafters of the Penal and Criminal Procedure Codes. To these clump of challenges, the author rightly concludes that as long

5 For instance, had writers like Nmehielle given consideration to the historical fact that the Islamic law had always been fully implemented in Northern Nigeria many years prior to and even after British colonization up till the Settlement of 1960, he would not have concluded as he did that the 'Islamic Law was never applied to crime, which was instead governed by the Penal Code'. See *Nmehielle*, note 4, p. 732. Contrary to this conclusion, Peter and Barends are of the view that 'Nigeria was the only colony where the colonial rulers allowed Shari'a criminal law to be applied'. See *Ruud Peter / Maarten Barends*, The Reintroduction of Islamic Criminal Law in Northern Nigeria, A Study Conducted on Behalf of the European Commission, Lagos 2001, p. 11.

6 Sir Ahmadu Bello (1910-1966) also popularly referred to as the *Sardauna of Sokoto.* After becoming the president of the National People Congress, he then won the 1954 general election to become the Premier of the Northern Region a position he held till 1966 when he was murdered in a military coup d' état.

as this essential information 'about this vital and controversial event in Nigeria's history' continues to elude us, a well founded opinions regarding the how and why the reintroduction of the comprehensive Shari'ah application was resorted to in most of the Northern states of Nigeria may not be forthcoming.

Researchers and others who are desirous of knowing what and what not were considered by the various Sharia'h states before eventually re-admitting the criminal aspect of the Islamic law into their respective states' legal system will, to a large extent, find useful information in the entire contents of volume 2 of this book. Aside from being a source of information for inquisitive minds, this volume guarantees the preservation of vital implementation documents which would have otherwise been kept away in untraceable archives. The historical significance of this volume will be well appreciated when one considers the ordeal and agony the author went through before retrieving these documents in 2002-2003, even though some had 'already been lost sight of and hard to come by', just in less than four years. At least with the publication of this volume, an original source of reference relating to various reports considered before and after the reintroduction of the Sharia'h in the North would have been preserved for posterity. It is not just the reports of these various shari'ah implementation committees that give credence to volume 2 of this book under review, but the bulk of memoranda sent to the Bauchi State Shari'ah Implementation Committee reflecting diverse interests. Most of these memoranda were replete with unqualified support and immeasurable ecstasy in addition to valuable suggestions to ease the Shari'ah implementation task (mostly from the Muslims). While others were manifestation of strong abhorrence, bitterness, fear and insecurity against the re-adoption of the Shari'ah criminal system into the Northern juridical system[7] (mostly from the Christians). The fact that the contents of these pre-implementation documents have now attained this amount of prominence, provides a viable pedestal upon which the success or otherwise of the Shari'ah application can be constructively evaluated. Having identified the reasons forming the grounds for antagonism and scepticism against the adoption of the complete Sharia'h and with the Islamic legal system now fully in operation in some of the Northern states, it therefore becomes easier to examine the veracity or inexactness of the fears raised against its implementation. I want to believe that by now, though premature, one would have been able to see how far the Sharia'h States have succeeded in allaying the fears of the antagonists of the Shariah implementation.

Volume 3 of this book which is also Chapter three entitled: *'Sanitizing Society'* is divided into four parts (Parts I – IV). The entire volume is made up of 233 pages the first half of which is dedicated to two important essays, one co-authored by *Ostien* and *Umaru* titled *'Changes in the law in the Sharia States Aimed at Suppressing Social Vices'* and the other one by. *Nasir* titled *'Sharia Implementation and Female Muslims in Nigeria'*. The second half of this volume contains 'Documentary Materials' touching on omnibus laws; Corruption; Liquor;

7 See for instance the memoranda submitted by Dr. Sylvester S. Shikyil and that of the Bauchi State branch of the Christian Association of Nigeria to the Bauchi State Shari'ah Implementation Committee reported at pages 64 and 79 respectively.

Gambling; Sexual immoralities; other matters related to women; unedifying media; and other social vices. The initiators and overwhelming enthusiasts of the reintroduction of the full Islamic corpus juris in the Northern states have anchored their unalloyed support for the Shari'ah, which is deducible from the volumes of memoranda submitted, on the endemic and almost incorrigible nature of social and moral decadence in the Nigerian society occasioned by the inadequacies inherent in the inherited Western-oriented legal system.[8] What *Ostien* and *Umaru* have done in their well articulated essay is to highlight these areas of social vices as identified by the proponents of the Shari'ah and then critically consider how far these 12 Northern states have been able to effect positive changes in their respective states using the instrumentality of the newly embraced Islamic legal system. These writers have also correctly considered the challenge and difficulty a hasty conclusion on the success or failure of the Shari'ah states so far in combating this social menace would and could pose at this stage given the dearth of any up to date statistical data and empirical investigation in this respect since 1999 (Vol. III, p. 8). It will only amount to a mere fantasy to think that corruption or any of these societal problems will magically disappear with the reintroduction of the Shari'ah law of crime in the Northern states without taking into account how deep these social vices have eaten and how unwavering they are still eating into the fabric of the nation. Even with one of the concluding observations made by this duo that the 'Sharia implementation has not meant very change in the laws of the Sharia States on the subjects which we have examined in this essay – corruption, liquor, sexual malpractices, gambling, and unedifying media' (Vol. III, p. 73), the fact that the Sharia by the impact of its implementation has been able to strengthen 'the consciousness of the people to abhor bribery and other corrupt financial practices' (Vol. III, p. 75) portrays an encouraging and positive steps in the right direction. *Nasir* in the second essay has discussed with meticulous precision how the Shari'ah implementation was received amongst the Northern Muslim women, their role and involvement in its implementation and the effects its adoption has on them. While alluding to the complexity of properly quantifying the extent at which the various 'overlapping groups and sub-groups of female Muslims in Nigeria's Sharia States' (Vol. III, p. 117) have been affected by the newly reintroduced Islamic penal law, the author concludes that generally, the Muslim women from the Shari'ah States do not perceive the Shari'ah implementation as oppressive as much as it does not deny them their rights of livelihood, mobility and freedom to socially interact in the traditional way (Vol. III, p. 118).

As mentioned earlier, volume 4 of this book, unlike the other four volumes, consists of two chapters – chapters 4 and 5. Chapter 4 of this volume commences with two introductory essays one by *Ostien* and the other by *Sada*. This chapter also contains the 'Draft Harmonised Sharia Penal Code' prepared by the Centre for Islamic Legal Studies (hereinafter referred to as CILS) of Ahmadu Bello University, Zaria with annotation. Also forming part of this chapter are the Niger State Penal Code (Amendment) Law; the Katsina State Islamic Penal System

8 See a section of the White Paper on the Report of the Committee on the Implementation of Sharia Law in Kebbi State on page 184 of Volume II.

(Adoption) Law, a one page instrument meant to show 'one possible strategy for bringing Islamic Criminal law back into force' (Vol. IV, p. 8); and conversion tables delineating various differences between the old Penal Codes and the new Shari'ah Penal Codes. In his introductory essay to chapter 4, *Ostien* takes the readers through the memory lane by digging, though briefly, into the history of the Penal Codes in the Northern States of Nigeria both during and after the colonial era. In drawing a line of similarity between the pluralistic nature of today's Shari'ah States' legal dispensation and the North of the pre independence era, *Ostien* refers to how less difficult it was then to amalgamate and apply both the substantive and procedural aspects of the Islamic criminal law along with the Nigerian version of the English Criminal Code and the native law and customs. *Ostien* also identifies some challenging areas in the newly adopted Shari'ah Penal Codes that are likely to create procedural problems hence the need for a further research. One of such problematic areas where *Ostien* fears 'large degrees of uncertainty and inequality, including discrimination based solely on religion' has to do with his observation that the Muslims could also just like the non-Muslims '*opt out of* the Shari'ah courts' (Vol. IV, p. 7) and by preference choose to be charged or tried under the old Penal Codes. This submission, to my mind, does not appear to be supported by the provisions of the Shari'ah Penal Codes of any of the Shari'ah States. Rather, paragraph C of the introduction to the Shari'ah Penal Code Law of Zamfara State, for example, makes it categorically clear that 'every person who professes the Islamic faith... shall be liable to punishment under the Shari'ah Penal Code for every act or omission contrary to the provisions thereof....'[9] The clarity and binding nature of this provision dismiss any fear of uncertainty as to who could and could not be tried under the Shari'ah Penal Codes. There is however the need to admit that regardless of the provision of paragraph C aforesaid, the Shari'ah courts will still have to contend with the procedural problem of those who are likely to deny their Islamic identity as a ground to opt out of the jurisdiction of the Shari'ah courts.

Another area identified by *Ostien* to be in need of further research in Islamic jurisprudence is the question of whether there exists any legal basis in the Shari'ah for designating some acts as '*hudud*-related' (such as receiving stolen property) and '*qisas*-related' (such as forced labour and kidnapping) offences. He has further observed that not only were these offences so designated, various penalties were also prescribed for their violation which again strengthens the need for a studious research into this area of the Islamic penal system. Taken that there are no such terms as 'hudud-related' or 'qisas-related' offences in the Islamic law of crime,

9 The Zamfara State government now having replaced its first Shari'ah Penal Code with the Harmonised Shari'ah Penal Code drafted by the Centre for Islamic Legal Studies of Ahmadu Bello University, Zaria, it must however be mentioned that this provision is still repeated as Section 3 of the Harmonised Shari'ah Penal Code except that the words 'Every person who professes the Islamic faith' are now replaced with 'Every person who is a Muslim.'.

what obtains is that a punishable act under the Shari'ah must fall within either the *Hudud*[10], *Qisas*[11] or *Ta'azir*[12] class of offences. Rather than embark on a voyage of innovative designation of crimes (*jinaaya*) and punishments (*uquubaat*), it suffices to bring all other offences that are not so defined or whose punishments are not specifically contained in either the Qur'an or the Sunnah under the *Ta'azir* offences. After all, the rationale behind the formulation of this system of ta'azir as correctly identified by *Peters* has been 'to provide grounds for the punishment of those who have committed *hadd* crimes or crimes against persons but cannot be sentenced to the appropriate punishment for procedural reason... or for the punishment of those who have committed acts that resemble these crimes but do not fall under their legal definitions'.[13] Perhaps, the designation of these offences as 'hudud-related' and qisas-related' in the Shari'ah Penal Codes must have been informed by this rationale.

Ostien also beams his searchlight on the procedural problem that could arise resulting from how the defence of provocation, recognised under the Penal Code, was carefully jettisoned by the Shari'ah Penal Code. With this, he envisages the re-emergence of the kind of friction that existed prior to the adoption of the Penal Codes of 1960 between the Islamic law and the then Criminal Code which was eventually put to rest in 1947 by the West African Court of Appeal in the famous case of *Tsofo Gubba v. Gwandu Native Authority*.[14] The fact that it is clearly enacted in the new Shari'ah Penal Codes that its provisions shall apply only to the Muslims explicitly dispels the recurrence of or the possibility of the facts in *Gubba's case* repeating itself. It goes without saying therefore, that a non-Muslim who does not, by consent, submit to the jurisdiction of the Shari'ah court can only be charged and tried before the High Court or Magistrates' Court under the Penal Code of 1960. A macroscopic evaluation

10 Crimes are designated as '*hudud'* when they fall within the categories of 'prohibitions ordained by Divine Law [Shari'ah], from which we are restrained by God with punishment decreed by Him; they form an obligation to God.' This explains why vast majority of Muslim scholars fully support the usage of the term '*hadd'* to describe crimes whose punishments are specified and decreed by the Qur'an and the Sunnah of the Prophet otherwise known as *'uquubaat muqaddarah*. These crimes are theft (*sariqah)*; drinking of alcohol *(shrub al-khamr);* unlawful sexual intercourse *(zinah)*; false accusation of unlawful sexual intercourse *(qadhf)*; banditry and highway robbery *(hiraabah)*; and apostacy *(ridda)*. See *Saeed Hasan Ibrahim / Nasir Ibraheem Mehmeed*, Basic Principles of Criminal Procedure Under Islamic Shari'a, in: Muhammad Abdel Haleem et al. (eds.), Criminal Justice in Islam. Judicial Procedure in the Shari'a, London 2003, p.18 and *Rudolph Peters*, Crime and Punishment in Islamic Law. Theory and Practice from the Sixteenth to the Twenty-first Century, Cambridge 2005, p. 53.

11 Unlike *hudud* offences which in the main are considered to involve the rights of God *(huquqllaah)*, *qisas* offences also referred to as retaliation concern the rights of man.

12 Since the fulfilment of the principle of Shari'ah demands that all forbidden or sinful acts do not go unpunished howbeit that these acts do not fall within the ambit of either the hudud or qisas offences, the Islamic penal system empowers the state and the judges to impose punishments on these forbidden acts which are accordingly designated as *Ta'azir*. By reason of its flexibility, offences that are most likely to fall under *Ta'zir* have been considered to be much wider in scope than those of *hudud* or *qisas.* See *Ibrahim / Mehmeed,* note 10, pp. 20-21.

13 See *Peters*, note 10, p. 66.

14 (1947) 12 W.A.C.A 141.

of the present legal dispensation in the Shari'ah states will reveal that the legal regime does not envision a situation of conflict between the old Penal Code and the Shari'ah Penal Codes that might necessitate a judicial pronouncement of superiority between the two penal laws.

One cannot but also mention the immense research and comparative value of the draft 'Harmonised Shari'ah Penal Code' prepared by the CILS, a unit of the Ahmadu Bello University at the behest of the 12 Shari'ah States. The inestimable significance of this Code can only be best appreciated when one considers the haste with which most, if not all, of the Shari'ah Penal Codes were drafted and eventually enacted thereby denying them the meticulous legislative quality they deserve. No wonder the government of Zamfara state wasted no time in fully adopting this draft.

Chapter 5 of volume 4 of this book which focuses mainly on the shari'ah criminal procedure codes also starts with an introduction wherein *Ostien* carefully considers the historical background of the Criminal Procedure Code which, like the Penal Code, is also a by-product of the Settlement of 1960. The introduction is followed by an aspect of the final report submitted by the Shari'ah implementation committee to the Sokoto State Government touching on the Islamic criminal Procedure; a report of another committee specifically set up by the Sokoto State Government to prepare the [Sharia] criminal procedure code; then comes the Harmonised Shari'ah Criminal Procedure Code again prepared by the CLIS which takes the largest portion of the whole of chapter 5; the Kano State Criminal Procedure Code (Amendment) Law 2000 with annotation; and a conversion table showing the various areas of differences between the 1960 Criminal Procedure Code and the Harmonised Sharia Criminal Procedure Code.

The fifth and last volume of this book as the theme suggests, *'Two Famous Cases'*, reports an edited and English translated version of the entire proceedings and judgments of the Shari'ah Courts in the famous *zina* cases of Safiyatu Hussaini and Aminatu Lawal. This volume which also represents chapter 6 of the book commences, as usual, with an introduction put together by *Ostien*, *Mohammed* and *Garba*. In addition to *'Bibliography of Islamic Authorities Cited in the Judgments and Elsewhere in the Work'* which also forms an important content of this volume, the volume concludes with a perceptive essay, *'On Defending Safiyatu Hussaini and Amina Lawal'* by *Yawuri*, the lead counsel in the two *zina* cases aforementioned.

The national and international attention these two cases attracted underscores the enormous significance of having a carefully translated and well edited version of the records of proceedings and judgments of these cases available to the public. Not only do these proceedings and judgments bring to the glare of the public the pragmatism inherent in the appellate system of the Islamic concept of criminal justice, but also reiterate the capability of the Islamic legal system to make necessary correction where the cause of justice will be impeded due to human errors. The well considered decisions of the two shari'ah courts sitting in their appellate jurisdiction in these cases have, no doubt, become a locus classicus in the Nigeria criminal legal system. To the Muslims, particularly those who are not well grounded in the intricacies of the Islamic penal law and its procedure, these judgments stand to broaden their perception of the applicability and enforceability of the Islamic law. To some non-Muslims and others

who, hiding under the canopy of human rights activism, would always fail to see justice in the justice of the Islamic legal system, the finality reached in these two cases should have by now allayed whatever apprehension or misgiving they have regarding the reintroduction and implementation of the Islamic penal law as done by the twelve Shari'ah states in the North.

On the whole, and considering the general scope of this book, one cannot but conclude that it is indeed a sourcebook particularly for scholars and research students who are interested in probing further into the historical relevance of the Islamic law in the making of the Nigerian legal system. It will also serve as a useful source of legal information for those who have flair for comparative legal practice in Nigeria. The research value of this treatise regarding the rebirth of the comprehensive Islamic legal system in the Northern states of Nigeria, as of today, remains peerless.

Muhammad-Basheer A. Ismail, Kingston upon Hull

Geo Quinot / Sue Arrowsmith (Eds.)
Public Procurement Regulations in Africa
Cambridge University Press 2013, 445 pages, £ 85.00 (US$ 135.00), ISBN 9781107028326

Public Procurement has long been a neglected area of research. It refers to the process through which the state acquires goods, works and services needed to fulfil its public functions. Regarding the quite significant percentage of GDP that is spent on public procurement, effective and efficient public procurement regulations and their implementation are of particular importance. This has led to the development of a distinct field of legal academic study, however, in Africa public procurement is still a marginal area of research. In African countries the share of GDP used to procure goods, works and services is even higher than in other (developed) countries; it amounts up to 25% of the GDP. The effectiveness and efficiency of public procurement systems in Africa has, therefore, a decisive impact on socio-economic development.

The book at hand has resulted from a three-year collaboration of the Universities of Nottingham and Stellenbosch under the British Academy's UK-Africa Academic Partnerships scheme. The project's objective has been an analysis of the current state of public procurement regulation in Africa. *Quinot* and *Arrowsmith*, two of the leading researchers in the area of public procurement law, have collected nine country studies from Africa, providing doctrinal legal analysis of those countries public procurement systems. The book also includes articles on the role of donors in regard to African procurement systems, procurement methods, supplier remedies, corruption and the promotion of social policy in public procurement in the African context.

The country studies in Part I introduce the public procurement systems by outlining the objectives, nature and organisation as well as the legal regime on public procurement. This is followed by annotations on what procuring entities and which type of procurement are subject to public procurement regulations. Finally, the authors describe and explain the public pro-