

From P. Ostien, ed., *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook* (Ibadan: Spectrum Books Ltd., 2007), Volume IV, Chapter 5, pp. 171-205. In the book, the title of the essay is "Introduction to Chapter 5". It introduces and discusses the Sharia Criminal Procedure Codes, which the rest of Chapter 5 documents in detail. The entire chapter, including the documentary materials, is available at <http://www.sharia-in-africa.net/pages/publications/sharia-implementation-in-northern-nigeria.php>.

## NIGERIA'S SHARIA CRIMINAL PROCEDURE CODES

*Philip Ostien*

### 1. Brief history of the law of criminal procedure in the Northern States of Nigeria.

a. The colonial period. The extreme legal pluralism practised in the Northern Region during the colonial period – even extending to the field of criminal law – has already been described.<sup>1</sup> This phenomenon affected not only the substantive law applied but also the rules of procedure followed in criminal matters in the various Northern courts.

i. The English courts. For the "English" courts – the Magistrates' and High Courts – there was, to go along with the essentially English Criminal Code applied in these courts, a Criminal Procedure Ordinance, first enacted in the earliest days of British rule in Nigeria.

[T]he Protectorate of Northern Nigeria decided to codify its criminal law and procedure and Gollan, the Chief Justice, proceeded to draft two Codes. The first, one of Criminal Procedure, was modelled on the Gold Coast Ordinance of 1876 and was enacted in 1903...

In 1914 the Protectorates of Northern and Southern Nigeria were amalgamated and the bodies of law operative in the two protectorates had to be synthesised. Criminal procedure presented no problem. In the South there was the Criminal Procedure Ordinance of 1876 originally enacted when Lagos was part of the Colony of the Gold Coast, and in the North there was Gollan's Criminal Procedure Proclamation of 1903 modelled on the 1876 Ordinance. All that was needed was to replace these with a consolidating Ordinance and the Nigerian Criminal Procedure Ordinance was accordingly enacted in 1914.<sup>2</sup>

The Criminal Procedure Ordinance governed not only procedure in criminal cases prosecuted in the English courts, but also some of the wider matters covered by the modern law of criminal procedure, including certain police procedures and allowable measures for the prevention of offences. In 1945 the old Ordinance – by then much amended – was repealed and replaced with a new one.<sup>3</sup> The new Criminal Procedure Ordinance continued in force throughout Nigeria up to 1960. As from time to time and

<sup>1</sup> In the Introduction to Chapter 4, this volume 3-4.

<sup>2</sup> H.F. Morris, "A History of the Adoption of Codes of Criminal Law and Procedure in British Colonial Africa, 1876-1935", *Journal of African Law*, 18 (1974), 6-25 at 9. The Gold Coast Ordinance of 1876, and hence the first Nigerian Criminal Procedure Ordinance, was based on models from British jurisdictions in China, Japan, Hong Kong, the Straits Settlements, Fiji and the Leeward Islands. *Id.* at 7-8. As up till then amended it appeared as Cap. 20 of the 1923 Laws of Nigeria.

<sup>3</sup> Ordinance No. 42 of 1945, Cap. 43 of the Laws of Nigeria 1948.

# Nigeria Criminal Procedure Code

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