

## **Applying *Hirāba* in Islamic Criminal Law to Curb Armed Banditry in the Zamfara State of Nigeria: Opportunities and Challenges**

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### **Abstract**

*The paper investigates the armed banditry that engages in the highway robbery attacking villagers and travelers in the Zamfara state of Nigeria. The paper aimed at examines *hirāba* in Islamic criminal law and the penal code of the state for the possibility of applying the provisions to curb armed banditry in the state. The paper is a Sharia study; thus, the descriptive-analytical method was followed. Opinions of four Sunni schools are relied on in most cases. In addition, academic works of contemporary jurists and thinkers in journals were extensively consulted. The critical studies of jurist's definitions of *hirāba* revealed that the crime of *hirāba* comprises maritime piracy, aircraft hijacking, armed banditry, kidnapping, and any act of destroying society. Zamfara state, which first reintroduced the Islamic criminal system, witnessed maximum security between 2000 and 2009 because there is a political will to enforce Islamic law. Although it is alleged that Sharia was supposed to bring joy but brought bandits to the state, while the study revealed that armed banditry started around 2009, sharia implementation is not responsible for the insecurity. The paper concludes that the practical solution is the enforcement of new Sharia in the region.*

**Keywords:** armed robbery, banditry, highway robbery, *hirāba*.

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## **Introduction**

Zamfara State in the Northwest geopolitical zone of Nigeria was created in 1996 out of the then Sokoto State. It shares interstate boundaries with Katsina to the East, Sokoto State to the West, Kebbi, Niger, and the Kaduna States to the South. Zamfara State Comprises fourteen local government areas: Gusau, Tsafe, Bungudu, Maru, Kaura-Namoda, Zurmi, and Shinkafi Birnin-Magaji, Talata-Mafara, Bakura, Maradun, Anka, Bukkuyum, and Gummi. The State also shares an international border with the Republic of Niger in the North. The State has a landmass of thirty-nine thousand seven hundred sixty-two square kilometers (39,762km). According to the 2006 Census, the state has three million two hundred and seventy-eight thousand, eight hundred and seventy-three people 3,278,873 and predominantly agrarian.<sup>2</sup>

Hausas are the dominant tribe, while the Fulanis formed between twenty to thirty percent total population, out of which about fifteen to twenty percent are pastoral. Zamfara State is endowed with a vast forest composed of thirty thick grazing reserves. The grazing reserves cover about two million two hundred and twenty-five thousand, six hundred and forty-eight hectares (2,225,648 hectares). This provides a habitable environment for pastoral life. The State has estimated total livestock of about Six million, comprising Cattle, Sheep, Goats, Camels, Horses, and Donkeys. However, one of the most disheartening issues that characterize humans living in Zamfara is the unending conflicts between Fulani herders and Hausa rural settlers, especially those residing along Dansadau, Zurmi, Shinkafi, Anka, Maradun, and Tsafe forest.<sup>3</sup>

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<sup>2</sup> Mustapha Umar Nadama, "Armed Banditry and Internal Security in Zamfara State," *International Journal of Scientific & Engineering Research* Volume 10, Issue 8, (August-2019), pp. 1219-1226.

<sup>3</sup> S.A. Anka, "emerging issues in Zamfara armed banditry and cattle rustling: Collapse of the Peace Deal and Resurgence of Fresh Violence". *International journal of innovative research and development*. Vol. 6, No. 12, 2017, pp. 161-169

Insecurity as a result of banditry in Zamfara state is no more a state affair. Instead, it has become a national issue that required a more comprehensive approach. For one reason or others, the Federal police and army seem incapable of tackling the problem militarily. Therefore, the only alternative that remains is Sharia criminal law since most of the population are Muslims. In the classical Arabic language, the word ‘*hirāba*’ or ‘*muhāraba*’ is defined as struggle, combat, fight, battle, warfare. *Muhārib*, belligerent al-‘*muhāribun*’ the belligerents.<sup>4</sup> Three terms are commonly used for this crime; i) *Hirāba* (armed robbery) ii) *sariqa al-kobra* (great theft) (highway robbery) iii) *qat’ al-tariq*, i.e., brigandage.<sup>5</sup> The four Sunni Schools of thought are divided on the term. In contrast, Hanafi and Shāfi’i jurists used the term *qat’ al-tariq* mostly.<sup>6</sup> Māliki jurists used *Al-hirāba*,<sup>7</sup> the Hanbali are using both synonymously. Al-Bahuti from Hanbali School says: “*Al-Muharib* is *qati` Al-tariq`*” (armed robber)<sup>8</sup>. Mohamed S. El-awa opines that the first term is preferable because it expresses the spirit of the crime mentioned in the Quran

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<sup>4</sup> J. M. Cowan, ed. *Hans Wehr Dictionary of Modern Written Arabic*, New Delhi: Modern Language Services, 1960), p. 166.

<sup>5</sup> Munir Ba’albaki, *Al-Mawrid A Modern English –Arabic Dictionary*, 19<sup>th</sup> ed., (Beirut: Dar El-Ilm Lil-Malayan, 1985), P. 128

<sup>6</sup> Ala’ al-Din Abu Bakr bin Mas’ud Al-Kāshāni, *Al-Badā’i as-sānāi’ fi Tartib al-Shara’i’* 2<sup>nd</sup> ed., (Beirut: Dar Al-kutub Al-Ilmiyah, 2003), Vol. 9, p. 360; Muhammad bin Ahmad bin Abi Sahl Al-Sarakhsi, *Al-Mabsut*, (Beirut: by Dar Al Marifah, n. d). Vol. 9, p. 195; Burhanuddin Ali Al-Marghinani, *Al-Hidayah, Sharh bidayatu al-Mubtadi*, (Dar Ihya’ al-Turath alArabi 1995) Vol 5, 377; Ahmad bin Hamza Ar-ramly, *Nihayatu Al-Muhtaj*. (Beirut: Dar Al-Kuub Ilmiyah, 2003). Vol. 8, p.3; Abu Hammed bin Muhammad Al-Ghazāli, *Al-wajiz fi Fiqh Al-Imam Ashafi’i*, 1<sup>st</sup> ed., (Beiru: Dar Al-Arqam, 1997), Vol. 2, p. 177.

<sup>7</sup>Ahmad Al-Dardir, *Sharh al-Kabir ala Mukhtasar Khalil*, (Dar Ihya’ al-Kutub alArabiyyah 1981) Vol. 4, 348;

<sup>8</sup> Monşur Bin Yusuf Al-Bahuti, *Kashaf al-Qinai’ ‘An Matn al-Iqna’*, (Beirut: Dar Aalam al-Kutub, 1983), Vol. 6, p.

chapter 5, verses 33 and 34.<sup>9</sup> However, both terms would be used interchangeably in this paper.

This paper aimed to examine *hirāba* in the Islamic criminal law and penal code of Zamfara State and interrogate the possibility of applying the provisions to curb armed banditry the state is facing. Thus, the paper attempts to look at the current security situation in Zamfara state to proffer a way forward for achieving permanent peace in the state and the region at large through the provision of Islamic criminal law.

Since the paper is a Sharia study, the prime method for collecting information has been the textual analysis of Islamic jurisprudence materials. Opinions of four famous Sunni schools of thought, namely the Hanafi, Māliki, Shāfi'i, and Hanbali, are referred to in most cases. Academic works of modern Muslim jurists and thinkers and other journals were also extensively consulted. Thus, the paper is divided into seven sections. The first section provides a brief introduction to the paper, and it describes the linguistic definition of *hirāba* (armed robbery, highway robbery, and banditry). The second is the literature review. The third examines the classical Islamic law of *hirāba*. In the fourth section, the paper's subject, i.e., jurist's opinions on physical acts constituting the crime of *hirāba* and its elements. The fifth section focuses on the punishment of *hirāba* and the law of pardon. The sixth section deals with the Sharia Penal Code of Zamfara state and the banditry. The seventh is mainly discussion. The paper is concluded in section eight with a conclusion.

### **Narratives on banditry in Zamfara State: A Literature review**

Zamfara State was created in 1996 out of the then Sokoto State. It shares interstate boundaries with Katsina to the East, Sokoto State to the West, Kebbi, Niger, and

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<sup>9</sup> Mohamed S. El-awa, *Punishment in Islamic Law*, (Indianapolis: American Trust Publications, 1998), 7

the Kaduna States to the South.<sup>10</sup> The State Comprises fourteen local government areas, with a landmass of thirty-nine thousand seven hundred sixty-two square kilometers (39,762km<sup>2</sup>). It has a population of three million, two hundred and seventy-eight thousand, eight hundred and seventy-three people 3,278,873 according to 2006 Census Figures. Hausas are the dominant tribe, while the Fulanis formed between twenty to thirty percent total population, out of which about fifteen to twenty percent are pastoral. Zamfara State is endowed with a vast forest composed of thirty thick grazing reserves. The grazing reserves cover about two million two hundred and twenty-five thousand, six hundred and forty-eight hectares (2,225,648 hectares). This provides a habitable environment for pastoral life. The State has estimated total livestock of about Six million, comprising Cattle, Sheep, Goats, Camels, Horses, and Donkeys.<sup>11</sup>

The tragedy that caused Zamfara state a bad name among other states in Nigeria is the unending conflicts between Fulani herders and Hausa rural settlers, which is the most critical challenge that threatens the state's peace.<sup>12</sup> Though the genesis of armed banditry in the State started around 2009, it became out of control in 2011 after the general elections.<sup>13</sup> The conflict has since 2011 created a considerable enmity between Fulani herders, farmers, and the rest parts of the communities in Zamfara. This enmity has been one of the push factors that influence the Fulani exits in more significant number to alternative places. In addition, the movement is characterized by many problems ranging from reprisal attacks before living or re-arranging for counter-attacks targeting members of vigilante groups in specific.<sup>14</sup>

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<sup>10</sup> Nadama, "Armed Banditry", p. 1219.

<sup>11</sup> Ibid, 1219.

<sup>12</sup> Anka, "emerging issues in Zamfara", 161

<sup>13</sup> Ibid, 161.

<sup>14</sup> Ibid, 163.

The conflict's complex nature remains a source of concern among the government, security agencies, and even researchers who find it challenging to define the nature scope and reality of its cause clearly. Even though people believe that the crises are caused by the struggle between Fulani herders and farmers, many look at it as more of a politically instigated conflict by the current administration as it fails to take precise measures that would help ensure sustainable peace 2011. People from the opposition People's Democratic Party criticize the state government for not ending the conflict.<sup>15</sup> The paper established the government's weakness in adopting strict measures that help end the crises in Zamfara, especially by adopting socio-economic policies that would lead to the rehabilitation and reconstruction of the victim's communities.<sup>16</sup>

From 2011 to date, more than 15,000 cattle were rustled by these suspected armed bandits, leaving the owners to survive in a state of uncertainty, and no village in the state has not witnessed the impact of cattle rustling and armed banditry.<sup>17</sup> For example, Mada District, Gusau Local Government witnessed over 12 different attacks by the bandits, which claimed the lives of over 20 people, and 1,500 heads of cattle were stolen at different times from 2014 to 2016.<sup>18</sup>

This insecurity has put Zamfara State at the top list of the major flashpoints of rural violence in Nigeria. This influenced strengthening and encouraging the vigilante group in the state. The informal security system called *Yan Banga* in the Hausa language has its root in the pre-colonial security system in Nigeria. The main objective of this community policing system was to ensure the

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<sup>15</sup> Ibid., 164

<sup>16</sup> Ibid, 168.

<sup>17</sup> Murtala Ahmed Rufa'i, "Vigilante Groups and Rural Banditry in Zamfara State: Excesses and Contradictions". In International Journal of Humanities and Social Science Invention (IJHSSI) | Volume. 7, Issue 06, 2018, 65-73

<sup>18</sup> Ibid, 66.

enforcement and maintenance of norms, values, and traditions. The task of community policing during this period was not difficult due to the low level of crime. However, members of the group were also few, and the group had no organized leadership structure.<sup>19</sup> In other areas, the vigilante contributed to cushioning the effect of banditry, but in Zamfara, some of the vigilante members seized the opportunity of the conflict to ‘witch-hunt their old foes.’

Moreover, with the increase in the spate of the conflict in 2014, the vigilante group had divided on how to approach the menace. Some believed that the bandits should be violently fought, while others advocated for a peaceful approach. This led to the emergence of parallel vigilante groups in the state: the militant and non-militant wings. This division and violent approach to the bandits triggered the conflict to a certain proportion in 2015. As a result of this, whenever and wherever the bandits strike, they explain that they are on a ‘vengeance mission’ or ‘reprisal attack’ against the vigilante members that carried out extra-judicial killings on their fellow members.<sup>20</sup> Thus, the rural banditry and cattle rustling nature in Zamfara state is quite different from other states.

As a result of banditry, northwestern Nigeria has become a country under distress in the torrential spate of armed violence and criminality in various parts. The north-central area has been afflicted by herdsmen militancy, which has plunged the region into a dire humanitarian crisis. In addition, the northwestern region has been enmeshed in the rapid upsurge of rural banditry along its international frontiers and the forested

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<sup>19</sup> L. Fourchard, ‘A New Name for an African Old Practice: Vigilantes in South-Western Nigeria’ *African: Journal of the International African Institute*. Vol.1, 2008, pp.16-40

<sup>20</sup> Rufa’i, “Vigilante Groups and Rural Banditry”, p. 69.

interior.<sup>21</sup> Northwestern Nigeria encompasses seven states: Kano, Katsina, Kebbi, Kaduna, Zamfara, Jigawa, and Sokoto. Five of these states, Katsina, Kaduna, Zamfara, Kebbi, and Sokoto, have been affected mainly by the scourge of rural banditry. Of these five states, Katsina, Kaduna, and Zamfara have been the most critical hotspots.<sup>22</sup>

Rural banditry has to do with armed violence perpetrated by criminal opportunists and syndicates in the countryside and frontiers of countries. It comprises armed criminality targeting human life or property: armed robbery, kidnapping, cattle rustling, and allied armed violence.<sup>23</sup> Unfortunately, in northwest Nigeria, banditry thrives within a socio-existential context characterized by governance deficits, which has created an abiding pretext for criminal opportunism and impunity. The scarcely governed borderlines, hinterlands and forestlands, and the poorly regulated mining, transhumance, and arms sectors in the region are the critical drivers of the rural banditry scourge. Concerning the incidences of village raids, highway robberies, kidnapping, and cattle rustling, the study situates the palpable threat of rural banditry in the focal area, noting that mitigating the scourge requires a systematic approach devitalizing the gamut of socio-existential factors that underlie and precipitate it.<sup>24</sup>

Rural banditry began as a resource-based conflict, and over time evolved into a regional conflict manifesting itself in the form of farmers/herders conflict, village raids, rape, and kidnapping.<sup>25</sup> Banditry, in this sense, is synonymous with the establishment of gang groups that

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<sup>21</sup> Al Chukwuma Okoli|Anthony Chinedu Ugwu “of Marauders, and brigands: scoping the treat of rural banditry in Nigeria’s North West” in *Brazilian Journal of African Studies*. Vol. 4, No. 8, 2019, pp. 201-222

<sup>22</sup> *Ibid*, p. 202

<sup>23</sup> *Ibid*, p. 202

<sup>24</sup> *Ibid*, p. 222.

<sup>25</sup> Abubakar Abdullahi, “Rural Banditry, Regional Security, and Integration in West Africa”. In: *Journal of Social and Political Sciences*, Vol. 2, No.3, 2019, pp. 644-654.



used small and light weapons to carry out attacks against people. In this regard, banditry could mean setting up criminal activities deliberately designed and carried out for personal gains.<sup>26</sup> However, where the term banditry is connected to rural, it implies a group of rural outlawed involved in illicit activities such as raiding villages, kidnappings, and cattle rustling for primitive accumulation of wealth. Thus, rural bandits are gang groups terrorizing local people or travelers of their valuable items or properties such as merchandise, money, cattle, camel, and sheep. They operate within and along rural borders with the assistance of their local collaborators, including, in some cases, state agents deployed to work for the safety and security of the people.<sup>27</sup>

However, poor handling of the rural banditry has significantly contributed to its transformation into a deadly conflict posing a significant threat to national and regional security and integration.<sup>28</sup> The pattern and intensity of rural banditry in the Northwest are connected to socio-economic, environmental, and political forces that shape the geopolitical zone's development. Closely connected to that is the gradual disappearance of grazing land and routes caused by the indiscriminate land allocation and poor urban and regional development plan implementation across the Northwest. State governors who are constitutionally responsible for land allocation and development blatantly abused and misused such powers for political benefits. Some state governors moved around with land titles and certificates as a political tool to generate support from elites and the electorates.<sup>29</sup>

Another factor that sustains rural banditry is elite conspiracy influenced by the quest for primitive

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<sup>26</sup> Ibid, p. 645

<sup>27</sup> Ibid, p. 645.

<sup>28</sup> Ibid, p. 649

<sup>29</sup> Ibid, p. 650

accumulation of power and wealth. Any political elites across political parties who lost the election and are dissatisfied with the state leadership support and conspired bandit groups to discredit political leadership and erode its legitimacy in the eyes of the electorates. Apart from political elites, traditional rulers also aided and abated rural banditry in the Northwest. Thus, rural bandits enjoyed unprecedented immunity from traditional rulers and were seen around local markets working freely with dangerous weapons. They attacked innocent people, imposed toll collection, and demanded ransom from traders and buyers on local markets days.<sup>30</sup>

Public officials in state security institutions are also becoming part of the conspiracy. For example, most senior military officers in charge of field operations hardly go to the field to have an on-the-spot idea on welfare, operational and technical challenges affecting their personnel. Instead, they mainly were lodged in hotels and government guest houses at the instance of the state. Apart from the elite conspiracy, state and non-state institutions have also contributed to the rise of rural banditry in the Northwest. One such institution is the Nigerian media which have become polarized and biased in their reporting and coverage of rural banditry in the sub-region. This, therefore, suggests that rural banditry can be classified into two ways. First, rural banditry based on need, and second, banditry based on greed. Rural banditry on need is perpetuated by those who lost their livelihoods, such as peasant farmers and Fulani herders. Elites perpetuate the second for primitive accumulation of power and /or wealth. Regrettably, Nigeria's political leadership paid more attention to the first form of banditry, neglecting the second, which is more severe than the first.<sup>31</sup>

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<sup>30</sup> Ibid, p. 650

<sup>31</sup> Ibid, p. 651.

### **Classical Islamic Law of *hirāba***

Highway robbery or brigandage crime is a severe and most dangerous crime that undermines the state securities from within. The crime terrifies People, not to mention the assault on their properties and their lives. However, many non-Islamic legislations do not include this crime among the articles of crimes related to the state security and safety of the state. Instead, they put it among the theft material. Probably, these legislations looked at the intent of the perpetrators, as their primary objective is taking money from the victims or rapping.

Moreover, these crimes do not affect the entity of the state directly. Nevertheless, no one denies the fact that highway robbery or brigandage crime is one of the most severe crimes against the security and stability of the state. Hanafi jurist, al-Kāshāni defines *qat' al-tariq* as:

*Attacks upon passers-by to take property by force so that people are refrained from passing freely through the streets. The attacker/s may be a group of armed bandits or a single person who possesses overwhelming power to obstruct the public passage, whether using offensive weapons or without a weapon, using substitutes such as sticks and stones.*<sup>32</sup>

The renowned Maliki jurist, Sidi Khalil, defined *muhārib* (brigand) and said: “*The brigand is he who, either acting singly or in concert with others, haunts the highways in order to waylay travelers, or who profits by the fact that his victims are far from help.*”<sup>33</sup> Bin Rāshed defines brigandage as: “Every act intended to make money in a way that is usually difficult to seek for rescue, whether by a man or woman, freed or slave, Muslim or

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<sup>32</sup> Ala' al-Din Abu Bakr bin Mas'ud Al-Kāshāni, *Al-Badā'i as-sānā'i, fī Tartib al-Shara'i'* 2<sup>nd</sup> ed., (Beirut: Dar Al-kutub Al-Ilmiyah, 2003), Vol. 9, p. 360

<sup>33</sup> Sidi Khalil, *Mukhtasar of Sidi Khalil*, translated by F. H. Ruxton, (Cairo: El-Nahar Press, 2004), 343

anyone else.”<sup>34</sup> While Al-Dardir, says: “*The brigand is a bandit that prevents people from using the road, or takes the money of a Muslim or someone else in a way that it is difficult for them to get a rescue.*”<sup>35</sup>

Imam al-Nawawi a Shāfi’i, a renowned jurist, defined *hirāba* and states:

*Whoever brandishes a weapon and terrorizes the streets inside or outside a city must be pursued by the authorities because if they are left unmolested, their power will increase, and through their killing and taking, money and corruption will spread.*<sup>36</sup>

Imām Al-Shāfi’i defined *Muhārib* and said: “Bandits are a group of armed people, objecting people, they usurping their properties in the desert or on the highway. It is possible to commit this crime even in a Bedouin camp or in a village”.<sup>37</sup> Al-Māwardi defined highway robbery as “*Waiting by the highway to steal traveler’s property by force, killing a passer-by and obstructing travel on the road.*”<sup>38</sup> Al-Mardāwi, a renowned Hanbali School of thought jurist, defines *muhāribun* (brigands); he says: “*they are those that object people in the desert with weapons in order to rob their money by force.*”<sup>39</sup>

Critical examination of the Maliki jurist’s definitions of *hirāba* and *muhārib* is based on the definition of *hirāba* recorded in the book *Al-Mudāwwana Al-kubrah* which

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<sup>34</sup>Muhammad bin Abdullah bin Rāshed, *Lubab al-Lubab*, 1st ed., (Tunis: Almatba’ Al-unisiya, 1376, A. H), 293; Ibrahim Abu Abdullah Muhammad Ibn Farhoon, *Tabsiratul Hukam*, (Dar al-‘Alamul-Kutub 2003) vol. 2, 203.

<sup>35</sup> Al-Dardir, *Sharh al-Kabir* Vol. 4, 348

<sup>36</sup> Abū Zakariyyā Yahyā ibn Sharaf al-Nawawī, *Al-Majmu’ Sharh al-Muhadhab*, (Riyadh: Makataba al-Irshad, n.d) Vol. 22, p. 227

<sup>37</sup>Muhammad bin Idrees Al-Shafi’i, *Al-‘ummu*, 1<sup>st</sup> (Al-Monsoura: Dar Al-Wafa’, 2001), Vol. 7, p. 385

<sup>38</sup> Ali bin Muhammad Al-Māwardi, *al-Ahkām Al-Sultānia*, 1<sup>st</sup> ed., (Cairo: Dar Al-Fikr, 1983), 56

<sup>39</sup> Ali Bin Sulaiman Al-Mardawi, *Al-Insāf fi Ma’rifat ar-rājhi minal-Khilāf*, 1<sup>st</sup> ed., (Riyadh: Matba’t As-Sunat Al-Muhammadiyah, 1955), Vol. 10, p. 291

reads: “*The act of terrorizing people for robbery or other purposes.*”<sup>40</sup> This implies that the act of terrorizing people is considered to be the main element in this definition. It means that all acts that involve terrorizing people, whether by using a weapon or force or anything that creates fear, are considered acts of *hirāba*. This reveals that the elements of intimidation and spreading fear are central to this crime. Taking Māiliki jurist Ibn ‘Abd al-Barr definition the agent of *hirāba* that says:

*Anyone who disturbs free passage in the streets and renders them unsafe to travel, striving to spread corruption in the land by taking money, killing people, or violating what God has made it unlawful to violate is guilty of hirāba, be he a Muslim or a non-Muslim, free or slave, and whether he realizes his goal of taking money or killing or not.*<sup>41</sup>

Ibn Jusy said: “The brigand is he who took up arms and blocked the road and intended to rob people, whether he was in the city or outside the city.”<sup>42</sup> Imam Dasuqi said: The brigand terrifies people on the highway to rob them their money or for another purpose.<sup>43</sup> Al-Dardir differentiates *ghasb* from *hirāba*. *Ghasb* consists of: forcibly and wrongfully taking another’s money without engaging in brigand.<sup>44</sup> *hirāba* is distinguished from *ghasb* not by taking money but by the element of inspiring fear for one’s life. However, this fear goes beyond the immediate victim, who is terrified and gives up his money). In addition, *hirāba* harms others. *hirāba*

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<sup>40</sup> Shanun bin Sai’d Tannukhi, *Al-Mudawwana Al-Kubrah*, (Riyadh: Ministry of Islamic Affairs, no date), Vo. 16, p.97

<sup>41</sup> Yusuf bin Abdullah Ibn ‘Abd al-Barr, *Al-Kdfi fi fiqh ahalmedint al-Maliki*, 1<sup>st</sup> ed., (Riyadh: Maktabah al-riyadh al-Haditha, 1978), vol. 2, p 1087.

<sup>42</sup> Muhammad bin Ahmad ibn Jusay, *Qawaninul Fiqhiyya*, (Beirut: Dar Ibn Hazam, 2013), 596.

<sup>43</sup> Dasuqi Hashyat, Vol. 348.

<sup>44</sup> Ahmad bin Muhammad Al-Dardir, *Aqrah al-Masalik limadhab al-imam Malik*, (Kano: Makabah Ayyub, 2000), 114

discouraged people from undertaking their ordinary course of activity out of fear for their lives.<sup>45</sup>

Therefore, many Maliki jurists define *hirāba* elaborately as “obstructing the highway, i.e., terrifying them by preventing their free passage, i.e., by preventing people from freely traveling by using the way, even if there is no attempt to take their money.”<sup>46</sup> Thus, for example, Al-Sawi, in explaining the last sentence, adds, “Even if he does not have the intention of taking money of the passer-by, but his intention is mere preventing people from traveling along with the ways and obstructing the free trip through it.”<sup>47</sup> Another commentator, Al-Dasuqi, is even more elaborated in his footnote called *Hashiyat al-Dasuki ala al-Sharh al-Kabir*. He writes:

*Muhārib (brigand) frightens the highway in order to prevent people from traveling along a road. This means that he who frightens the people on the highway and prevents them from traveling through it is a brigand, even if he does not aim to take their property but rather only to obstruct the free trip through the highway. Be those obstructed are particular people or the general public. Also, whoever goes out to excite fear on the highway to force themselves upon people’s vulvas is considered to have committed an act of brigandage more heinous than those who go out intimidating the highway to take people’s belongings.*<sup>48</sup>

Ibn Al-‘Arabi said: “brigandage against vulvas is more obscene than it is in the properties, people would be satisfied to allow their belongings to be robbed away, but

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<sup>45</sup> Sherman A. Jackson , “Domestic Terrorism in the Islamic Legal Tradition, the Muslim world,” Vol. 91, Fall 2001, 293-310

<sup>46</sup> Ahmad bin Muhammad Al-Dardir, *Ashrihi al-Ṣaghir Ala Aqrab al-Masalik limadhab al-imam Malik*, (Cairo: Dar Al-M’arif, no date), Vol. 4, 491

<sup>47</sup> Ahmad Al-Ṣawi, *Hashiyatu Al-Ṣawi ala Ashrihi al-Ṣaghir*, (Cairo: Dar Al-M’arif, no date), Vol. 4, 492

<sup>48</sup> Muhammad bin Arafa Al-Dasuki, *Hashiyat al-Dasuki ala al-Sharh al-Kabir*, (Dar Ihya’ al-Kutub al-Arabiyyah 1981) vol. 4, p. 348

no man would surrender his wife and daughter to be robbed sexually.”<sup>49</sup>

From the definitions of Maliki jurists, the crime of *hirāba* (brigandage) include a) employment of a narcotic in order to rob; b) enticement into an ambush of a child or an adult in order to murder or rob him; c) killing by day or night, in an inhabited house or the street, or using violence in order to steal.<sup>50</sup> In addition, all acts of murder committed by stealth, poisoning, drugging, car- bombings are all under the crime of *hirāba* brigandage.<sup>51</sup> The *muhārib* are therefore those who raise arms against innocent people with whom they had no previous enmity.

In Al-Shāfi’i’s opinion, the crime of *hirāba* must be carried out by a group of people. According to this view, if a single person commits this crime, he will not be liable for *hadd* or prescribed punishment for *hirāba* since the criteria required in *hirāba* are fulfilled. Al-Shāfi’i, however, views that the seriousness of *hirāba* remains the same whether it is committed in a city, village, or desert. It is stated in Al-Mughni that the *muhārib* is armed robber attacking people in the desert with offensive weapons, seizing their money by force openly”.<sup>52</sup> Hence, those who ask for money by mere oral threats are not considered as committing this offense. They are said to be ‘armed’ when they carry sticks or even stones.<sup>53</sup>

Al-Mawārdi, the definition of *hirāba* as “Waiting by the highway to steal traveler’s property by force and this means obstructing travel on this road,” reflects the reality of *hirāba* at the early time. However, this definition may not be applicable at present, as the act of *hirāba* can occur in any place. Al-Māwardi also seems to be taking a

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<sup>49</sup> Muhammad bin Abdullah Ibn Al-‘Arabi, *Ahkam al-Qur’an*. Beirut: Dar al-Kutub al-‘Ilmiyyah, 2003. Vol. 2, p.95.

<sup>50</sup> *Mukhtasar of Sidi Khalil*, trans. P. 343.

<sup>51</sup> Jackson, “Domestic Terrorism”, p. 299

<sup>52</sup> Muhammad bin Abdullah Ibn Qudāma, *Al-Mughni*, 3rd ed., (Riyadh: Dar al-‘Alamul-Kutu, 1997), Vol. 12, p. 474

<sup>53</sup> *Ibid*, p. 475

different line from Al-Shāfi'i's view when he includes 'force' in his definition rather than a weapon. By using the term 'force' in the definition, Al-Māwardi may intend to expand his definition of *hirāba*. By definition, those who take other properties by force, with or without weapons, are considered committing *hirāba*.

The act of *hirāba* is complete, according to the Hanbali School, when: "One-armed with offensive weapons robs the people in the desert, where the victims cannot reasonably expect rescue from anyone."<sup>54</sup> Al-Hijāwi stated, "*Muhāribun* (brigands) are bandits who are obligated and committed, male or female, armed with an offensive weapon or anything else like stick and stones, in the desert, city, or on the sea, robbing people of their money by force publicly."<sup>55</sup> The Hanbali schools have a similar view to that of the Hanafī on *hirāba* definition regarding committing the crime of *hirāba*. They maintain that when a person is robbed in the city, he might have help from people, but it is impossible to get help in a desert or beyond the locality boundary.<sup>56</sup> Concerning this point, the Hanafī jurists have made an interesting observation. They held that persons who rob people in the city or between two villages are not liable for *hadd* (fixed) punishment.<sup>57</sup> Al Mirghināni, stated: "if a person commits a highway robbery by night, or by day within a city, this person is not considered a robber."<sup>58</sup> However, Abu Yusuf, as reported by Ibn Hummām, one of the latest Hanafī jurists, held a different opinion. He believes that brigand could occur in any place; the Quran text does not specify the place of the crime.<sup>59</sup> He explains that Abu Hanifa's observation was based on social life conditions during his

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<sup>54</sup> Ibid.

<sup>55</sup> Sharaf-deen Musa Al-Hijawi, *Al-iqna' fi Fiqh Hanbal*, (Beirut: Dar Al-Ma'rifah, no date), Vol. 4, p. 287

<sup>56</sup> Al-Kāshāni, *Al-Badā'i as-sānāi'*, Vol. 9, p. 364

<sup>57</sup> Muhammad bin Ahmad bin Abi Sahl Al-Sarakhsi, *Al-Mabsut*, (Beirut: by Dar Al Marifah, n. d). Vol. 9, vol. 9, p. 201.

<sup>58</sup> Al-Marghinani, *Al-Hidayah*, Vol 5, p. 377

<sup>59</sup> Kamal-deen Muhammad Bin Humam, *Shrih Fathi al-Qadir*, (Beirut: Dar Al-Kotob Al-Ilmiyah 2003), Vol. 5, p. 414



time. These days people used to carry weapons with them. Therefore they could defend themselves. However, nowadays, people have discarded this practice, and it is possible to commit robbery in the places mentioned above.

According to some Hanafi jurists, the robbers have the courage and strength to execute their plans regardless of the nature of the instruments, be they are offensive weapons, wooden sticks, or stones. After analyzing all the definitions of *hirāba* given by the jurists, it is cleared that the definition of the Mālik seems to be very concise yet covering most of the elements given by other jurists at the same time. However, it is noteworthy that the jurists seem to ignore the most crucial element of *hirāba*, i.e., causing destruction, in their definitions. Therefore, it is necessary to add this element to the definition of the Māliki School in order to establish the most comprehensive definition for *hirāba* and the most applicable in the present day. Therefore, the crime of *hirāba*, after some modification, can be defined as:

*Hirāba* (brigandage) is an act of terrorizing people for robbery or other purposes, armed banditry with its attendant crimes, kidnapping, culpable homicide, cattle rustling, and destroying society, irrespective of gender of the actors or the place of the occurrence. Based on this definition, the crime of *hirāba* comprises maritime piracy, aircraft hijacking, armed banditry, kidnapping, cattle rustling, and the act of destroying society. Thus, any act that contains any of these mentioned activities could be considered as *hirāba* according to the classical Islamic jurisprudence.

### **Physical acts constituting the crime of *hirāba***

We mean by the term ‘physical acts that constitute the crime of *hirāba*’ because external physical activities which the crime of *hirāba* is made up. The external activity from which *hirāba* is made is the cause of its public or private harm. Whether the harm is intended or

just by accident without the perpetrator's intention, the crime does not have its physical element unless the external activity is available.

#### 1. The physical or material act of *hirāba*

The material act that constitutes *hirāba* is an open attack on passers-by. However, the act has many forms. Therefore, our discussion will focus on the physical acts of *hirāba* and the conditions of that act. Al-Kāshāni, from Hanafi School, says: "armed robbery is a forceful attack on passers-by in a struggling manner."<sup>60</sup> Ar-Rasa' said: "armed robbery is egress to terrorizing innocent people on the highway to take their superciliously."<sup>61</sup> Ar-ramly states: "armed robbery is a crime committed by an armed person or by a group of armed persons who attack innocent travelers or wayfarers on the highway or in any other place for robbing their property using force when the victims are unable to receive any immediate help from any quarter."<sup>62</sup> Ibn Qudama said: "armed robbers are those who attack people openly and seize their money by force."<sup>63</sup>

All these texts show that the physical or material acts of *hirāba* comprised maritime piracy, aircraft hijacking, armed banditry, kidnapping, cattle rustling, and the act of destroying society. Furthermore, all acts of murder committed by stealth, e.g., poisoning, drugging (and, by extension, more modern activities such as car-bombings), fall under the law of *hirāba*. Thus, any act that contains any of these mentioned activities could be considered as *hirāba*.

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<sup>60</sup> Al-Kāshāni, *Al-Badā'i as-sānā'i*; Vol. 9, p. 360; Al-Shafi'i, "Al-ʿummu," Vol. 7, p. 385

<sup>61</sup> Muhammad al-Ansory ar-Rasa', *Sharh Hudud ibn 'Arafa*, 1<sup>st</sup> ed., (Beirut: Dar al-Gharb al-Islami, 1993) Vol. 2, P.654

<sup>62</sup> Ar-ramly, *Nihayatu Al-Muhtaj*. Vol. 8, p.3

<sup>63</sup> Muhammad bin Abdullah Ibn Qudama, *Al-Mughni*, 3rd ed., (Riyadh: Dar al-'Alamul-Kutu, 1997), Vol. 12, p. 474

## 2. Elements of *hirāba*

### a. Use of weapons

The jurists of the four schools have different opinions concerning the use of weapons as an element of *Hirāba*, Hanafi, Shafi'i, and Hanbali Schools agree that weapons are one of the essential elements in crime. They view that instruments must be used in the crime, be they are weapons or weapon-substitutes such as sticks and stones.<sup>64</sup> According to this opinion, the crime of *hirāba* cannot be carried out unless one of these instruments is used. The instruments used in committing the crime are essential because they give the victim the impression that the criminals are serious in their threat. There is no doubt that people are more terrified if the threat comes from those who have weapons in their hands than if it comes from those who have not. Hence, according to Hanifa, Shāfi'i, and Hanbali schools, the crime is not considered as *hirāba* if the offender does not use any weapon or instrument in committing his crime, even when the crime involves homicide, robbery, or terrifying the public.

However, according to the Māliki School, the culprit does not need to use offensive weapons in *hirāba*. According to them, the accused who uses his physical strength in committing the crime may also be considered brigand and, therefore, punished according to the prescribed fixed punishment.<sup>65</sup> Thus the use of a weapon is not a necessary condition to prosecute a culprit in *hirāba*.

### b. The site of commission of *hirāba*

The crime of robbery mostly is on the highways, forests, and other places where the victims cannot

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<sup>64</sup> Al-Kāshāni, *Al-Badā'i as-sānā'i*; Vol. 9, p. 365; Al-Shafi'i, "Al-'ummu," Vol. 7, p. 385

<sup>65</sup>Tannukhi, "Al-Mudawwana," Vol. 16, p.103

usually find rescue. According to Hanafi, ibn Majshun from Maliki, imam Ahamad, and Khraki from Hanbali School view that *hirāba* takes place only on the highway and outside towns and villages because rescue in the town and villages should always be available. Thus the criminal shall be liable to *hadd* punishment if it is committed outside the populated area; otherwise, it shall be discretionary punishment called *ta'zir*.<sup>66</sup> However, according to Maliki, Safi'i, and the majority of Hanbali, and Abu Yusuf from Hanafi School are of the view that the *hadd* (fixed punishment) is applicable wherever, that is, *hirāba* can take place anywhere whether the typical frightening is there or not, or whether rescue is available or not, or the crime cannot be prevented.<sup>67</sup> Thus, *hirāba* is liable to *had* (fixed punishment) whether it is committed inside the population or outside the population. Ibn Farhoon said: the brigand in the city and outside the city are the same.<sup>68</sup> Al-Husoni remarked: "The crime of banditry does not need to occur in a remote area."<sup>69</sup> In the views of Hanafi and Hanbali School, the place of the committing *hirāba* is a very significant element in *hirāba*. It is understood from this view that the crime that is considered *hirāba* in the desert is not considered *hirāba* if it occurs in the city where the victims have the opportunity to seek help from other people. Thus, one who robs, murders, or terrifies others will not be punished as brigand (*muharib*) unless this act is carried out in a remote area where the victim cannot get help. Furthermore, according to this opinion, the victim in a city could get aid from

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<sup>66</sup> Al-Sarakhsi, "Al-Mabsut", p. 201

<sup>67</sup> Abu al-Walid Muhammad Ibin Rushd, *Bidayat al-mujtahid wa nihayat al-muqtasid*, (Beirut: Dar al-Kitab al-'Arabi, 2004), Vol. 2, p. 373

<sup>68</sup> Ibn Farhoon, "Tabsiratul Hukam", Vol. 2, p. 204

<sup>69</sup> Abu Bakr bin Muhammad Al-Husaini Al-Husoni, *Kifayatu Al-Akhyar*, (Cairo: Dar Ihiya' al-Kutub al-'Arabiya, 1979), Vol. 2, p. 193

people very quickly when attacked by the robbers and therefore need not be protected by the law of *hirāba*. Sarakhsi, in supporting this opinion, claimed that the punishment for *hirāba* could not be inflicted unless the crime is committed in an uninhabited place.<sup>70</sup>

The jurists who hold the view that there is no difference between inside and outside the city do so because of the generality of the verse. It seems that the opinion given by Shāfi'i is more acceptable since the crime of *hirāba* could happen everywhere regardless of the place. In some instances, the crimes that happen in the city are worse than those outside it. Thus, special consideration should not be given to the place where the crime is committed. A person who commits a crime in a town has a more dangerous character than a person who commits it elsewhere; he certainly cannot be considered to be less so.<sup>71</sup>

c. *The time of the commission of hirāba*

Debates over the time of committing the crime of *hirāba* among the jurists in the past are not necessary for the 21<sup>st</sup> century. The reality has proven the committing of this crime now a day in broad daylight. Thus, as a general rule, the crime of *hirāba* could happen at any time, during the day and at night. The jurists did not restrict its occurrence to a specific time, that if it did not occur within that period, the act would not be considered *hirāba*. However, according to Abu Yusuf from the Hanafi School of the view, it depends on where the crime is committed. If the crime is committed in the town and the armed robbers attacked in the broad daytime, the crime is considered armed robbery if they used the offensive weapon. However, if they used a less

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<sup>70</sup> Al-Sarakhsi, "*Al-Mabsut*", Vol. 9, p. 201

<sup>71</sup> Al-Shafi'i, "*Al-'ummu*," Vol. 7, p. 385

offensive weapon like a stick or stones, the crime would not be considered armed robbery. However, if the armed robbers attacked in the night, either with an offensive weapon or less offensive, the crime is considered armed robbery irrespective of the weapon used.<sup>72</sup> Therefore, it is better not to give special consideration to the time the crime is committed. This is why it is necessary to open the door for collective *ijtihād* to reinterpret Islamic jurisprudence to consider the contemporary reality while applying Sharia.

### **The punishment of *hirāba* and the law of pardon**

The punishments for the crime of *hirāba* are explicitly outlined in the Quran:

*The reward of those who wage war against Allah and his messenger and strive to create disorder in the land is only that they are slain or crucified, or their hands and feet be cut off on alternate sides or expelled from the land.*<sup>73</sup>

This verse lays down the different forms of punishment that may be meted out to those who commit the crime of *hirāba*. The object underlying these punishments embodied in the words, their hands and their feet be cut off on the alternate side, is, on the one hand, to disable the culprit from carrying on the crime of aggression, and on the other, to leave him fit enough to earn his living by doing some work. Cutting off the hand and the feet on the same side would leave the culprit utterly helpless.<sup>74</sup> The words ‘expelled from the land’ signify imprisonment. This shows that Sharia takes extreme measures when the interests of the state or

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<sup>72</sup> Al-Sarakhsi, “*Al-Mabsut*”, Vol. 9, p. 201-202

<sup>73</sup> Quran, 5: 33-34.

<sup>74</sup> Mirza Bashir-ud-Din Mahmud Ahmad, *The Holy Quran with English Translation and Commentary*, (Tilford: Islam International Publications Ltd, 1988), Vol. 2, p. 622

society demand to uproot a dangerous evil.<sup>75</sup> People would criticize crucifixion as a punishment for the crime of *hirāba*. Practically, crucifixion is a deterrent or prevention. In the sense that, when Imam Malik was asked about it, he did not reply but merely said, I have never heard of anyone who was crucified except a man called al-Harith who was crucified in the time of Abd al-Malik bin Marwan after claiming to be a prophet.<sup>76</sup> Therefore, crucifixion in the modern age is practically impossible, and it would mean execution by any means.

Juristic opinion concerning the punishments prescribed in the Quran could be divided into two groups, Hanafi, Shafi'i, and Hanbali Schools. The jurists of these Schools held that this crime involves more than possible punishment, depending on how the criminal act is committed, if the criminal kills his victim, he should be sentenced to death; if he steals his money, he should have his right hand and left foot amputated; and if he threatens travelers, he should be banished. In other words, the punishment's imposition is to differ according to the nature of the crime and not according to the nature of the personal character of the criminal.<sup>77</sup>

On the other hand, the Maliki School holds that the judge can choose the punishment suitable in each case and impose it.<sup>78</sup> This is to say that the judge has to do his best to determine what is most beneficial for the community and act. Thus, the jurists who hold the first view justify applying one punishment or considering the actual offense committed. In contrast, the second view differentiates between punishments in consideration of the personal character of the criminal.<sup>79</sup>

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<sup>75</sup> Malik Ghulam Farid, *The Holy Quran English Translation & commentary*, (Rabwah-Pakistan: The Oriental and Religious Publishing Corporation Ltd, 1969), p. 251.

<sup>76</sup> Tannukhi, , "*Al-Mudawwana*," Vol. 16, p.99

<sup>77</sup> Al-Sarakhsi, "*Al-Mabsut*", Vol. 9, p. 195; Ar-ramly, "*Nihayatu Al-Muhtaj*," Vol. 8, p. 5; Al-Bahuti, *Kashaf al-Qinai'*, Vol. 6, p. 150

<sup>78</sup> Tannukhi, , "*Al-Mudawwana*," Vol. 16, p.99

<sup>79</sup> El-awa, "*Punishment in Islamic Law*," p. 12

Based on these discussions, these punishments are elective based on *ijtihad* and consultation aiming at fulfilling the common interest, moreover, according to the necessary laws to be enacted as required by the Islamic Sharia principles that acknowledge the elective punishments. The opinion that assigns a specific punishment for a specific crime has no Traditions or legal precedents to support it as the only acceptable view. It also leads to imposing upon the government restrictions not ordained by Allah upon him. Applying the punishments of individual crimes to those committed by robbers lacks support or recommendation of the Sharia. Thus, taking the punishments mentioned in the Quran chapter 5 verse 33 as electives are the more appropriate interpretation.<sup>80</sup>

On the question of repentance and their interpretation of the verse, “*Except those who repent before you overpower them.*”<sup>81</sup> This verse promises amnesty to offenders if they repent. However, those who commit heinous offenses against individuals or society cannot, in ordinary circumstances, be pardoned by the state even if they repent. On the contrary, they must suffer the penalty of their wicked deeds as prescribed by the law. Repentance may secure for them pardon from God, but the powers of the state are limited in this respect. However, the crimes committed against the state may be forgiven if the offenders repent.<sup>82</sup> Thus, if the offenders repented before being apprehended, either by turning oneself in and displaying plain indications of a change of heart, the mandatory criminal sanctions (execution, crucifixion, amputation and exile or imprisonment) were to be dropped, as “rights of God” means the rights of the state. However, civil liability, the

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<sup>80</sup> Inas’ Abbas’ Ibrahim, “The Punishments of Hirabah (robbery): Crime-specific?”

Or Alternative.” Available at: <https://www.apc.ku.edu.kw//jsis/> accessed 14 November, 2020

<sup>81</sup> Quran, 5:34.

<sup>82</sup> Farid, “The Holy Quran English,” p. 252.



right of a victim's family to demand execution or reimbursement for the stolen or damaged property, could not be set aside.<sup>83</sup>

Amnesty is necessary for the crime of *hirāba* because punishment in the Islamic penal system is prescribed purposely to protect society from crime. In order to achieve this purpose, Islamic law, while prescribing punishments for criminals, make it possible for them to be pardoned when they realize they realize the evil of their conduct and desire to mend their ways. However, while punishment may be withheld, provision must be made for all the injuries and harm resulting from the criminal's act. In this way, society does not lose anything. On the contrary, it gains a new member who, if he had not been given a chance to repent, forever would have been considered an outlaw.<sup>84</sup>

### **Sharia Penal Code of Zamfara state**

Zamfara State was created out of the old Sokoto in 1996 and shared a great deal with Sokoto regarding social composition, history, and cultural orientation. Both states have overwhelming Muslim majorities. In October 1999, the first civilian governor of the State, Alhaji Ahmad Sani, announced the expansion of the Sharia to include criminal law. Thus, Zamfara Sharia Penal Code was first enacted as Law Number 10 of 2000, but in 2005, it was replaced with the "harmonized" version produced in 2002 by the Center for Islamic Legal Studies, Ahmadu Bello University Zaria.<sup>85</sup>

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<sup>83</sup> Al-Kāshāni, *Al-Badā'i as-sānā'i*. Vol. 9, p. 372-373; Solhi Abd Sam'i Al-Abi Al-Azhari, *Jawahirul Iklil Sharh Mukhtasar Khalil*, 1<sup>st</sup> ed., (Beirut: Al-Maktabah Al-Thakāfah, 1997), Vol. 2, p. 295; Al-Ghazāli, *Al-wajiz* Vol. 2, p. 178; al-Nawawī, *Al-Majmu'*, Vol. 22, p. 242-243; Ibn Qudāma, *Al-Mughni*, Vol. 12, pp. 483-484.

<sup>84</sup> El-awa, "Punishment in Islamic Law," p. 13

<sup>85</sup> Heather Bourbeau, Muhammad Sani Umar, and Peter Bauman, *Shari'ah criminal law in Northern Nigeria. Implementation of Expanded Shari'ah Penal and Criminal Procedure Codes in Kano*,

*Hirāba* is defined in section 151 to 154 as: “Whoever acting alone or in conjunction with others in order to seize property or to commit an offense, or for any other reasons voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or instant hurt, or of instant wrongful restrain in circumstances that render such person helpless or incapable of defending himself, is said to commit the offense of *hirāba*. Additionally, the Zamfara penal code provides that if life and property are taken during the commission of *hirāba*, the penalty is crucifixion. The Maliki School provides that a person who has committed *hirāba* will not be punished if he gives himself up to the authorities. This provision, however, is not contained in Nigerian codes.<sup>86</sup> Maliki School has been the dominant school in the North since around the thirteenth century.<sup>87</sup> Although the constitution does not refer to any school, the Sharia Court of Appeal laws of northern Nigeria gives legal endorsement to the Maliki School.<sup>88</sup>

It was argued that Islamic law was replaced over time by the common law, Christian in orientation, and reflects Western values. Nevertheless, unfortunately, the common law has failed to be an effective mechanism in checking the rise of crime and moral decadence; it became necessary to try another alternative legal system. Furthermore, the only alternative is Sharia that is a

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Sokoto, and Zamfara States, 2017–2019 Washington, DC 20401, (Washington: UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM, 2019), p. 23.

<sup>86</sup> Elizabeth Peiffer, “The death Penalty Traditional Islamic Law and as Interpreted in Saudi Arabia and Nigeria,” William & Mary Journal of Women and the Law, Volume 11, issue, no, 3 (2005), pp. 507-525 available at: <https://www.scholarship.law.wm.edu/wmjowl/vol11/iss3/9> accessed 15 November, 2020

<sup>87</sup>Yusuf, Ahmad Beita. Nigeria legal System: Pluralism and Conflict of Laws in The Northern States. <[www.kubanni.abu.ng](http://www.kubanni.abu.ng)> accessed 21 May, 2020.

<sup>88</sup>Laws of Northern Nigeria, Sharia Court of Appeal Law (1963) Cap. (122), § 14.

divine, complete, universal, and complete code of practice covering social, economic, political, spiritual, and legal.<sup>89</sup>

With the implementation of Sharia as an alternative legal system to control crime and moral decadence, it was generally believed that the State would be secured. And from 2000 to 2009, the State witness relative security of life and property. However, armed banditry started around 2009. Initially, the bandits used to carry Dane guns, cutlasses, and sticks for their operations, and most of their activities were targeted at cattle owners and cattle rearers found in isolated villages and forests. This unpleasant act triggered the affected communities predominantly in dispersing rural settlements to organize a local vigilante group to counter or checkmate the activities of the bandits.<sup>90</sup> This action, instead of checkmating the bandit's activities, had triggered the dangerous activities. It is virtually impossible to travel from Sokoto to Zamfara by road because of insecurity in the country. Some opines that, in 1999, when Sharia Law was declared in Nigeria, and almost all the 19 northern states joyfully, exuberantly adopted it. According to the principles of Sharia, people supposed to be seeing joy, happiness and equity, and so forth. However, unfortunately, insecurities of life and property are the outcomes. Those who brought the Sharia should tell the nation why Boko Haram and bandits have now taken over our country.<sup>91</sup> This means that those that lamented the insecurity in the northern part of Nigeria believe that it was the extension of the Sharia to include criminal law that created *Boko haram* in the northeast and bandits in the Northwest.

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<sup>89</sup> Ibid.

<sup>90</sup> Nadama, "Armed Banditry", p. 1220.

<sup>91</sup> Matthew Hassan Kukah, "sharia was supposed to bring joy-how come book haram and bandits have taken over?" <https://firstcallnewsline.com.ng> accessed 18 November 2020.

## **Problems in the Implementation of *Hirāba* in Zamfara State**

Armed violence perpetrated by criminal opportunists and syndicates in the countryside and frontiers of countries. It comprises acts of armed criminality targeting human life or property: armed robbery, kidnapping, cattle rustling, and allied armed violence discussed in the various narratives on banditry in Zamfara State are analogous to the Classical Islamic Law of *hirāba* discoursed. As a result of reintroducing Islamic law in the State shortly after the country's return to democratic rule. The whole northern States enjoyed maximum security of life and property 2000 - 2009. That was precisely the tenor of the Governors that returned to Sharia from 2009 to date. The level of insecurity further increased with the changing of the farmer-herdsmen clashes into banditry and cattle rustling. In Zamfara State, a form of insecurity changed to include the kidnapping of people for ransom.

It is understood from the various jurists' opinions that *hirāba* can be committed even without using any weapon or instrument, by using physical strength, even though that degree of crime is different, it is not acceptable to make the use of weapons a necessary element in *hirāba*. Thus it is suggested that those who use physical strength in committing the crime, whether it involves murder or robbery or any other crimes that fall under this category, are considered committing the crime of *hirāba*.

Definitions of the majority of the jurists include the act of robbery as an essential element in *hirāba*. This means that the act is not considered *hirāba* if robbery is not involved, even if it involves a weapon, terrifying people, or murder. However, the same jurists seem to accept exciting fear in people's minds as *hirāba* when discussing the punishment. Therefore, although they assert that robbery is one of the elements in *hirāba*, in the punishment, they seem to agree that those who terrify people without engaging themselves in robbery or killing

are liable for an exile which is one of the punishments prescribed for *hirāba*. Thus, it is evident in this case that they accept that robbing people's money is not an essential element in *hirāba*, even though they clearly stated the opposite view in their definitions.

Although the Mālikis jurists mentioned the word robbery in their definition, they do not see the act of robbery as one of the necessary elements in *hirāba*. Although it may be acceptable in their view that robbery is one of the objectives in the crime of *hirāba*, this does not mean that those who do not rob but engage in other kinds of crimes, such as murder or terrifying others, are not considered as committing the crime of *hirāba*. In other words, the crime of *hirāba* is complete when other requirements are met even though there is no robbery involved. Thus it can be said that the opinion of the Mālikis is preferable. In addition, Māliki School considers the act of terrifying people as a necessary element in *hirāba*. Māliki School views that the act of terrifying people is the most crucial element in *hirāba*. Although the Māliki School does not include other elements mentioned by other jurists, such as the place of committing of *hirāba*, weapon, and robbery, it is suggested that this element covers other jurists mention all other elements. In other words, the act is considered as when it is *hirāba* meant to terrorize people, whether the accused uses a weapon or merely his physical strength in executing the crime. The act is also considered as *hirāba* regardless of where it takes place and the nature of the motives.

Denying independent thinking and exercise of judgment that has been discouraged for centuries is quite contrary to the sharia requirements.<sup>92</sup> The inadequacy of the use of this principle in the background of the relative intellectual indolence and love of personal extravagance

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<sup>92</sup>Muhammad Nejatullah Siddiqi, 'Tawhid: The Concept and process', in: Omar Agil Syed, *et al.* (Eds.), *Reading in the Concept and Methodology of Islamic Economics* (Kuala Lumpur: Cert Publication, 2005), pp. 1-22.

had brought about the situation of stagnation and a downward trend of decadence in Islamic civilization. Thus, the provisions in the crime of *hirāba* looked somehow impracticable and unattractive.<sup>93</sup>

Instead of committing efforts to intellectual discovery, the emphasis has been on following the example of human beings and accepting their opinions on all matters that require deliberation and individual reasoning. Thus, cultural imitation of the forefathers has become the highest value in religious, social, and even legal matters. This deprived Muslims of the freedom they enjoy in these matters within the framework of Sharia.<sup>94</sup> As a result, empiricism and the use of the faculties of observation, inference, and reasoning generally did have any place in the mind of the contemporary Muslim. Creativity has no role, and knowledge is reduced to the learning of the already known. Religious behavior has become synonymous with behaviors regulated by the authority.<sup>95</sup> Thus, the crime of *hirāba*, to contemporary observers, looks so much unrealistic and unattractive. Contemporary jurists would notice a modern gap in the Islamic jurisprudence (*fiqh*) discourse of *hirāba*, mostly of medieval origin.<sup>96</sup> Unfortunately, no effort is made to change the narratives in most of the faculty of Sharia. To continue following the opinions of the jurists of the medieval era is considered a commitment to Allah. We forget that the four famous schools of Sunni are not the only schools in the history of Islamic jurisprudence.

Moreover, none of these schools was established during the lifetime of the jurists whose name the school later become identified.<sup>97</sup> However, critical examination of

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<sup>93</sup>Ibid, p. 141.

<sup>94</sup>Ibid, p. 16.

<sup>95</sup>Ibid, p. 16.

<sup>96</sup>Mohammad Hashim Kamali, "Terrorism, Banditry and Hirabah: Advancing New Shariah Perspectives". *Islam and Civilizational Renewal* </Br> ICR Journal 8 (1): (06/16/2017)11-34. <https://icrjournal.org/index.php/icr/> p. 15

<sup>97</sup> Said Ramadan, *Islamic law its scope and equity*, 2<sup>nd</sup> ed., (no place of publication and publisher, 1970), pp. 89-90.

the jurist discourse revealed that the crime of *hirāba* is any act of terrorizing or intimidating people for robbery or other purposes, highway robbery, armed banditry with its attendant crimes, kidnapping, culpable homicide, cattle rustling, and the act of destroying society, irrespective of the gender of the actors or the place of the occurrence. Therefore, the crime of *hirāba* comprises maritime piracy, aircraft hijacking, highway robbery, armed banditry, kidnapping, cattle rustling, and the act of destroying society. Thus, any act that contains any of these mentioned activities could be considered as *hirāba* according to the classical Islamic jurisprudence.

There are different views concerning elements of *hirāba*, such as weapons by criminals in order to terrify people and obstruct their regular movements on the highway. Hanafi, Shafi'i, and Hanbali Schools agree that weapons are essential elements in crime. They view that instruments must be used in the crime, be they are weapons or weapon-substitutes such as sticks and stones. However, according to the Māliki School, the culprit does not need to use offensive weapons in *hirāba*. According to them, the accused who uses his physical strength to commit the crime may also be considered brigand. The crime of robbery mostly is on the highways, forests, and other places where the victims cannot usually find rescue. According to Hanafi, ibn Majshun from Maliki, imam Ahamad, and Khraki from Hanbali School view that *hirāba* takes place only on the highway and outside towns and villages because rescue in the town and villages should always be available. However, according to Maliki, Safi'i, and the majority of Hanbali and Abu Yusuf from Hanafi School are of the view that *hirāba* may be committed in the city or countryside.

As a general rule, the crime of *hirāba* could happen at any time, during the day and at night. They did not restrict its occurrence to a specific time, that if it did not occur within that period, the act would not be considered *hirāba*. However, according to Abu Yusuf from the Hanafi

School of the view, it depends on where the crime is committed. If the crime is committed in the town and the armed robbers attacked in the broad daytime, the crime is considered armed robbery if they used the offensive weapon. However, if they used a less offensive weapon like a stick or stones, the crime would not be considered armed robbery. However, if the armed robbers attacked in the night, either with an offensive weapon or less offensive, the crime is considered armed robbery irrespective of the weapon used. According to all scholars, for an act of criminality to be classed as *hirāba*, it is essential that the assailants are superior in strength, carry arms and that their victim/s cannot overpower them or escape. *Hirāba* must also be committed openly.

Taking the victim's property or killing them are considered aggravating circumstances. Repentance by the terrorists before they are capture and arrest exonerates them from capital punishment. However, it does not necessarily exempt them from criminal responsibility for other crimes committed during the attack (such as homicide, injury, and armed robbery). This combines both public and private rights. These provisions could be used to address the insecurities in any country.

From this point, *hiraba* is compared with domestic terrorism in the United States. According to a definition attributed to the FBI, domestic terrorism is "the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political goals."<sup>98</sup> A principal ingredient of this definition focuses on an inducement or spread of fear, which is also how Muslim jurists have described *hiraba*. Another aspect in common between *hiraba* and domestic terrorism is the lack of a personal relationship between the parties, in the sense that the victim and killer may not even know one another.<sup>99</sup>This kind of intimidation or fear lies at the

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<sup>98</sup>Jackson , "Domestic Terrorism," p. 295

<sup>99</sup> Ibid.



heart of banditry in Zamfara and elsewhere in North-Western Nigeria.

The first enacted Sharia Penal Codes in Zamfara were drafted in great haste. That is why it is legislatively poor, with incomprehensible wording, incorrect cross-references, omissions, and contradictions. Another factor contributing to the deficiencies in the codes was the feeling that the law itself was no more than an instrument to introduce Islamic criminal law. While the reliance would be on the traditional texts of Maliki jurisprudence, in cases in which the law was not clear or silent.<sup>100</sup> This shows the political undertone of the hurried implementation of the Sharia penal code in the State. However, if the implementation is not political, all the above-mentioned abnormalities would have been addressed since Sharia is dynamic, not stagnant. Those lamenting the insecurity in the northern regions are right when it has been virtually impossible to travel from Sokoto to Zamfara by road due to highway robbery, armed banditry, and kidnapping on the road. However, they forget that between, years 2000-2009, it was not like that because there is a political will to enforce Islamic law. However, the period is not without criticism. The state is criticized that it has the highest poverty rate in the country despite being the first State to implement Sharia. The critics opined that it is a matter of time for people to realize that this is all deception, this is all politics, this is not religion; it is about politicians appropriating religion as a discourse for getting into power.<sup>101</sup>

Kabir Marafa, a former senator from Zamfara state, who is one of the politicians that benefited from the reintroduction of Sharia in the State condemned the Sharia in his State, alleging that the Sharia practiced in

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<sup>100</sup> Ruud Peters, *Islamic Criminal Law in Nigeria*, (Ibadan: Spectrum Books Limited, 2003), pp.14-15.

<sup>101</sup> Sanusi Lamido Sanusi, "Zamfara started Sharia, today it has highest poverty rate," available at: <http://www.vanguardmng.com> accessed 20 November 2020.

the state is not based on the teachings of Islam, it is some persons introduced it to hold on to power.”<sup>102</sup> It is crystal clear that the reintroduction of Sharia in Northern Nigeria is politically motivated. Political class continues to arm the youth, employ and deploy them to commit a heinous crime, shed blood at every critical point in the nation’s political life, especially during the election.<sup>103</sup> It is established that armed banditry in Zamfara state started around 2009 but came out of control in 2011 after the general election.<sup>104</sup> That was after the two tenors of Governor Ahmad Sanni that reintroduced the Sharia.

The governor’s mistake was his reliance on the traditional jurists that strongly believe in the strict adherence to the opinions of the ancestors. They believed that Zakat should be collected and shared with the people as a permanent income. That is what they know to be the only function of Zakat. They do not know that Zakat could be used to create job opportunities instead of creating joblessness. Thus, the implementation of Sharia is not the cause of *Boko Haram* in the northeastern or banditry in northwestern Nigeria. They cannot interpret the provision of Sharia correctly. The northern political elites always try to satisfy their masters in the UK and the USA. They are Christian political clerics that continued putting pressure on the governments to suspend the Sharia. On the other hand, Muslim clerics are incapable and then turn themselves into tools in the hands of politicians because of appointments and government contracts. These and more are the factors responsible for the insecurity the northern part of the country is facing today. Banditry and other causes of insecurity in northern Nigeria have been

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<sup>102</sup> Unini Chioma, “Zamfara people have been deceived,” available at:

<https://www.thenigerialawyer.com/> accessed 19 November, 2020.

<sup>103</sup> Abdulmajeed Hassan Bello, “ Causes and dynamic of political violence in Nigeria: Islamic views on the solutions,” in *International Journal of Humanities and Social Science Invention (IJHSSI)*, Volume 2, issue, 3, (March 2013), pp. 28-34

<sup>104</sup> Nadama, “Armed Banditry”, p.1220

allowed to degenerate into a complex national emergency with dire territorial implications. Crime thrives in contexts where there is little deterrence.<sup>105</sup>

Based on military reconnaissance and raids, the federal government's counter-banditry effort is excellent and commendable. However, it has failed to bring about the needed respite, owing to the operational challenges primarily arising from insufficient knowledge of the terrain. This makes the involvement of local vigilantes and community watch groups more critical.<sup>106</sup>

The crime of *hirāba* in Islamic law contains maritime piracy, aircraft hijacking, armed banditry, kidnapping, cattle rustling, and the act of destroying society. Any of these mentioned activities could be considered as *hirāba* according to the Sharia. If these provisions are properly utilized, they can address the problem of armed banditry the state is facing today. Provided there is a political will to do so. Without that, there is no practical solution other than enforcing the true and unblemished Sharia in the region.

## **Conclusion**

The various narratives on banditry in Zamfara State are analogous to the Classical Islamic Law of *hirāba* discoursed. With the reintroduction of Sharia in 2000, the whole northern States enjoyed maximum security of life and property till 2009. That was precisely the tenor of those Governors. From 2009 to date, the level of insecurity further increased with the changing of the farmer-herdsmen clashes into banditry and cattle rustling. In Zamfara State, a form of insecurity changed to include the kidnapping of people for ransom.

The crime of *hirāba*, as discourse, is an act of terrorizing people with for robbery, armed banditry,

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<sup>105</sup> Al Chukwuma Okoli, "what can be done to fight rural banditry in northern Nigeria," "available at: <https://www.theconversation.com> accessed 17 November, 2020.

<sup>106</sup> Ibid.

kidnapping, culpable homicide, cattle rustling, and any act of exciting fear in society, irrespective of whether the actors are male or female and irrespective of the place of the occurrence of the crime. Therefore, the crime of *hirāba* contains maritime piracy, aircraft hijacking, armed banditry, kidnapping, cattle rustling, and the act of destroying society. In addition, aggravating circumstances consist of taking the victim's property and/or killing them.

Amnesty to offenders is promised in the Sharia if they repent before they are captured. Repentance may secure for them pardon from God, but the powers of the state are limited in this respect. However, the crimes committed against the state may be forgiven. This combines both public and private rights. These provisions could be used to address the banditry in any country. The first Sharia Penal Codes enacted in Zamfara seems to have been drafted in great haste. However, all abnormalities observed would have been addressed gradually. Even with that, they witnessed maximum peace and security between, years 2000-2009. The armed banditry in Zamfara state started around 2009 but got out of control in 2011 after the general election.

We can therefore conclude that the northern political elites, Christian political clerics that continued putting pressure externally and internally on the governments to suspend the Sharia, and Muslim clerics that turned themselves to tools in the hand of politicians because of appointments and government contracts are responsible for insecurity the country is facing today; not the Sharia. If the provisions of the crime *hirāba* are appropriately utilized, they can address the problem of armed banditry the state is facing today. Provided there is a political will to do so. Therefore, the paper reinstates no practical solution other than enforcing the faithful and unblemished Sharia in the region.

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