

REPORT OF THE TASK FORCE ON SHARIA IMPLEMENTATION BAUCHI STATE OF NIGERIA

Submitted to the Executive Governor of Bauchi State
His Excellency Alhaji (Dr.) Ahmadu Adamu Mu'azu (Mutawallen Bauchi)
14th August, 2001

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1.0 LETTER SUBMITTING REPORT

TASK FORCE ON SHARIA IMPLEMENTATION
BAUCHI STATE OF NIGERIA
ADMINISTRATIVE SECRETARIAT

Gombe Road (Adjacent Local Government Audit) Bauchi Phone: 077-542295

Our Ref: _____ *Your Ref:* _____ *Date:* _____

TFSI/BS/ADM/VOL.1/130

14th August, 2001

His Excellency,
Alhaji (Dr.) Ahmad Adamu Mu'azu
(Mutawallen Bauchi),
The Executive Governor,
Bauchi State

Your Excellency,

SUBMISSION OF REPORT

In order to fulfil the pledge made to the overwhelming Muslim population of the State, Your Excellency constituted the Task Force on Sharia Implementation on the 27th of February, 2001. The Task Force was essentially mandated to carry out all necessary ground-work for the take off of the Sharia judicial system in the State.

Consequent upon the constitution of the Bauchi State Sharia Consultative Council and the Sharia Commission, I have the honour on behalf of the entire members of the Task Force, to present this Report to Your Excellency, along with the other volumes of the Report for information and record.

The volumes of our Report are as follows:

- Volume I:** Main Report.
- Volume II:**
1. Bauchi State Sharia Penal Code Law 2001
 2. Sharia Courts Commencement (Administration of Justice and Certain Consequential Changes) Law 2001.
 3. Sharia Court of Appeal (Amendment) Law 2001
 4. Sharia Commission Law.
- Volume III:**
1. Magistrate Court Law
 2. District Courts Law
 3. Penal Code 1999 (Amendment) Law 2001
- Volume IV:** Government White Paper of November, 2000 on the Report of the Bauchi State Sharia Implementation Committee
- Volume V:** Major Activities of the Task Force.

On behalf of the members of the Task Force, I hereby express our sincere thanks and appreciation to Your Excellency, for offering us the opportunity to serve our dear State in the capacity that we did.

Yours sincerely,

Alh. Muhammad Danmadami CFR, NPM, mni (DIG Rtd.)

(Sa'in Katagum)

Chairman

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3.0 ACKNOWLEDGEMENT

In the name of Allah, Most Gracious, Most Compassionate and Merciful.

With gratitude to Almighty Allah and salutations to the noble Prophet, Muhammad (SAW), members of the Task Force on Sharia Implementation wish to register our profound thanks and appreciation to His Excellency, Alhaji (Dr.) Ahmadu Adamu Mu'azu (Mutawallen Bauchi), the Executive Governor of Bauchi State, for granting us the opportunity to take part in this historic assignment of practicalising the Sharia judicial system in Bauchi State.

The Task Force also wishes to express its appreciation for the support and co-operation it received from the Deputy Governor Alhaji Abdulmalik Mahmoud (Baraden Katagum), the Secretary to the Government Alhaji Muhammad Nadada Umar (Zannan Misau), the Head of Civil Service (Alh. Adamu Gumba), all Honourable Commissioners and Heads of Extra-Ministerial Departments, all Permanent Secretaries particularly the Permanent Secretary for Security Matters (Alhaji Bello Umar Gamawa) and other staff of the Government House and staff of the judiciary too numerous to mention.

For the legislative arm, the Task Force can not forget the support and cooperation given to it by the Honourable Speaker (Alh. Bappah Haruna Disina) and members of the Bauchi State House of Assembly. The contribution of the Clerk (Alh. Ya'u Mohammad Gital) and other staff of the Honourable House are also recognised and appreciated especially the direct involvement of Ali Babayo Gamawa (Principal Legislative Officer of the Honourable House) who served as Assistant Secretary to the Task Force.

The Task Force wishes to also express its appreciation for the support and co-operation received from the State Commissioner of Police and Director State Security Services. The co-operation and assistance offered by members of the *bisbah* organisation and the press in enlightening the general public on the activities of the Task Force deserve special commendation.

The active participation of the four members co-opted by the Committee in screening of judges, inspectors and other court personnel as well as in the discharge of the general assignment of the Task Force is recognised and appreciated. They are Imam Ibrahim Idris, Sheikh Mahmoud Shira, Barrister Hudu Yunusa Ari and Alh. Muhammad Bello (Sarkin Malaman Katagum).

The contributions of the auxiliary staff attached to the Task Force secretariat are highly recognised and appreciated. They are Mohammed Yusuf Wunti, Saleh Mohammed Bara, Shehu Mudi, Sani Ahmadu, Ibrahim Umar, Dahiru Mohammed and Hamza Umar.

Finally, we wish to thank the entire Muslim community for the various assistance rendered to the Task Force. We pray that may the Almighty Allah keep us on the path of Sharia for ever and ever.

4.0 PREAMBLE

Some time in December, 1999, thirteen Islamic associations led by Alhaji Muhammad Danmadami CFR, NPM, mni (DIG Rtd.) (Sa'in Katagum) paid a courtesy visit to the Bauchi State House of Assembly and presented, on behalf of the entire Muslims of Bauchi State, a written memorandum requesting the Honourable House to consider the possibility of reintroducing full Sharia judicial system in the State in keeping with the happenings in other States.

The Honourable Speaker (Alhaji Bappah Haruna Disina) and a sizeable number of some Honourable Members of the House received the delegation in the House Chambers where the request was formally presented. In his response to the speech of the leader of the delegation, the Honourable Speaker, after receiving the report on behalf of the House, informed the delegation that the House had already formed an ad hoc committee on Sharia on 20th October, 1999 to consider the need to implement full Sharia in the State. He therefore thanked the delegation for strengthening their position.

The ad hoc committee of the House on Sharia, under the Chairmanship of Hon. Hamza Muhammad Lanzai (the Minority Leader of the House), effected all necessary preliminary ground-work for adoption and implementation of Sharia by the State. The committee invited for memoranda from individuals and groups within the State, and even visited some Local Governments and sampled their opinions. It also collected samples of legislations on Sharia from Zamfara State and organised a live discussion forum between the Muslim *ummah* representatives and those of the Christian Association of Nigeria led by Rev. Dauda Marafa which was held in the House Chambers. The occasion was very successful as it provided for clear understanding among the followers of the two faiths. The House committee further succeeded in unifying the various Islamic aid groups and adherents of other Muslim organisations within the State. It also presented draft legislations on Sharia which greatly helped in documentation and codification of the State laws. The committee had Ali Babayo Gamawa (Principal Legislative Officer of the House) as its Secretary.

From the Executive side, His Excellency, Alhaji Ahmad Adamu Mu'azu, the Executive Governor, observed that the teeming Muslim population of the State were agitating for Sharia judicial system. To satisfy their yearnings and aspirations, the Governor appointed a 29-member Sharia Implementation Committee under the Chairmanship of Kadi Abdullahi Y. Marafa (Marafan Bauchi) on 26th June, 2000 and inaugurated the Committee on 29th June, 2000.

The Sharia Implementation Committee was essentially mandated to advise the State Government on the structure, materials, personnel and training required for the implementation of the Sharia legal system. It was also to suggest amendments to the Penal Code within the framework of the Constitution and to organise seminars, discussions, drama presentations and working visits with a view to enlightening the public, particularly the non-Muslims, on their rights and duties under the Sharia legal system. The Committee was finally charged with the responsibility of proposing a take-

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off date for the Sharia legal system in the State, taking into account all pre-requisites and procedures that would be involved. The Committee was given three months to submit its report to the government by 29th September, 2000.

The Committee worked round the clock and dedicated itself fully in the discharge of the duties assigned to it. It operated with three sub-committees and each sub-committee was assigned to a particular area. The sub-committees were Documentation and Codification Sub-Committee headed by Hon. Justice Adamu Abdulhamid, the Judicial Structure and Personnel Sub-Committee headed by Hon. Hamza Muhammad Lanzai and the Public Enlightenment Sub-Committee headed by Alh. Muhammadu Danmadami (Sa'in Katagum). Each of these sub-committees submitted its report to the main Committee, and the main Committee submitted its report to the government on the 29th of September, 2000 as scheduled. The report of the Committee contained specific and general recommendations as well as draft legislations comprising of new laws, amendments to some existing laws and repeal of others, etcetera.

Consequent upon the receipt of the report of the Sharia Implementation Committee, the State Government appointed a White Paper Drafting Committee in October 2000 under the Chairmanship of Hon. Justice Bala Umar to study the said report and prepare a White Paper on it (i.e. a draft of Government position). The Committee was given only one month to submit its report and the report was accordingly submitted to the Government in November, 2000.

On the 27th February 2001, His Excellency the Executive Governor **Alhaji Ahmadu Adamu Mu'azu** signed into law Sharia Courts Commencement (Administration of Justice and Certain Consequential Changes) Bill and the Sharia Penal Code Bill 2001, and inaugurated the Task Force on the take-off of the Sharia legal system vide letter NO. GO/SS/REL/1/1.S.1/T/24 dated 27th February, 2001 (copy of the letter can be seen in volume V of this report).

The Bauchi State House of Assembly which was the initiator of the Sharia legal system in Bauchi State did not waste time when it received the Executive proposal in the White Paper. The House unanimously accepted and adopted the proposal and passed the Bill into law without further waste of time.

5.0 INTRODUCTION

The Task Force was inaugurated on 27th February, 2001.

5.1 Composition: It has the following members:

- | | | | |
|----|--|---|----------|
| 1. | Alh. Muhammad Danmadami, CFR, NPM, mni (DIG Rtd) (Sa'in Katagum) | - | Chairman |
| 2. | Dr. Hadi Sheikh Dahiru Bauchi | - | Member |
| 3. | Dr. Ibrahim Tahir (Talban Bauchi) | - | Member |
| 4. | Barrister Lawal H. Ibrahim | - | Member |
| 5. | Barrister Al-Mustapha Sulaiman Hassan | - | Member |
| 6. | Hon. Justice Bala Umar (rep of the Hon. Chief Judge) | - | Member |
| 7. | Hon. Kadi Hamidu Gambo Bununu (rep. of the Hon. Grand Kadi) | - | Member |

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- | | | | |
|-----|--|---|-----------|
| 8. | Ambassador Adamu Yusuf (rep. of Bauchi Emirate Council) | - | Member |
| 9. | Alhaji Muhammadu Mijinyawa Ibrahim (representative of Katagum Emirate Council) | - | Member |
| 10. | Habibu Idris Shall Esq (Hon. Solicitor General/Permsec, Bauchi State MOJ) | - | Secretary |

5.2 The main terms of reference: The main terms of reference of the Task Force contained in its letter of appointment were as follows:

1. To co-ordinate the take-off of the Sharia legal system.
2. To liaise with the State Government, the Judicial Service Commission and the office of the State Grand Kadi on the:
 - (a) Establishment of the State Sharia Commission.
 - (b) Establishment of the Sharia Consultative Council.
 - (c) Appointment of new judges and inspectors of the Sharia Courts.
3. To ensure that all necessary groundwork for the take-off of the Sharia legal system in the State is put in place before 31st March, 2001 (which was later extended to 14th August, 2001).
4. To co-opt any other person(s) it deems appropriate to facilitate its onerous work.

5.3 Other terms of reference: Other Terms of Reference of the Task Force contained in the Government White Paper on Sharia Implementation were as follows:

1. Renovation and/or construction of court premises, residential quarters for judges and provision of working materials;
2. Amendment of laws of Bauchi State to conform to Sharia dispensation.
3. Phasing out of Area Courts system within six months from the date of inauguration of the Sharia system.
4. Completion of first phase of the take-off of Sharia system by 1st Muharram, 1422 AH/ _____ March 2001.
5. Other matters as may arise from the White Paper and the new legislation on the Sharia legal system.

6.0 METHODOLOGY

In order to accomplish its onerous task, the Task Force swung into action immediately after its formation and inauguration by His Excellency on the 27th of February, 2001. In executing its assignment, the under-listed methods/procedures were adopted as follows:

6.1 The Task Force started by holding an inaugural meeting on 27th February, 2001 in the Council Chambers of the Government House, Bauchi during which the Chairman congratulated all members on their appointments into the Task Force and urged them to be just and fair in performing the assignment.

Thereafter, the meeting deliberated on the following:

- (i) Administrative secretariat

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- (ii) Take-off grant
- (iii) Operational vehicles
- (iv) Co-option of other members
- (v) Working materials, computer and photocopier

During the meeting, the Chairman Alh. Muhammad Danmadami (Sa'in Katagum) suggested the use of the Council of Destitute secretariat located along Gombe Road, Bauchi to serve as administrative secretariat of the Task Force. Consequently, members inspected the building and agreed to utilise same as the secretariat. The Secretary was then directed to request the Office of the Secretary to the State Government to effect necessary plumbing and electrical repairs.

In the inaugural meeting also, the Task Force resolved to apply for ₦1 million take-off grant, two station wagons, computer and photocopier as well as the need to co-opt some Islamic scholars in order to tap from their wealth of experience. To that effect, the following were co-opted:

- (i) Alhaji Muh'd Bello (Sarkin Malaman Katagum)
- (ii) Imam Ibrahim Idris (Chief Imam of Gwallaga Juma'at Mosque)
- (iii) Sheikh Mahmoud Ibraheem Shira
- (iv) Barrister Hudu Yunusa Ari (Deputy Director J.S.C.)

6.2 The Task Force split itself into sub-committees in order to accomplish the task within the stipulated time. Prominent among these sub-committees were the following:

- (i) Legal Sub-Committee (for amendment, repeal or draft of laws)
- (ii) Examination Sub-Committee (for preparation of guideline for screening of judges and inspectors of Sharia Courts)
- (iii) Contact Sub-Committee (for court and residential accommodations for judges)
- (iv) Report-Writing Sub-Committee (for the draft of final report).

6.3 The Task Force analyzed its terms of reference very carefully and digested all the contents of the Government White Paper on Sharia Implementation. Through its Legal Sub-Committee, it also studied the constitution of the Federal Republic of Nigeria 1999 and almost all the Bauchi State laws especially the legislations passed in respect of the Sharia judicial system. In addition to the drafting of amendments, repeal and new laws, the Task Force further drafted instrument for the transfer of the Sharia judges from the office of the Hon. Chief Judge to the office of the Hon. Grand Kadi.

6.4 The Task Force, through the media organisation, kept the public informed and enlightened on its activities through BATV Programme *Da Bazarku a ke Rawa* and series of press releases as well as press conference.

6.5 The Task Force also viewed it necessary to invite leaders of various Islamic groups and imams within the State to explain to them the rationale for the extension of time. The meeting took place at Abubakar T/Balewa Tomb.

6.6 As part of its assignment, the Task Force found it necessary to invite all the serving Area and Upper Area Court judges and inspectors of Sharia Courts for screening. To

that effect, letters were written to the Chief Judge requesting him to inform the judges and subsequently the inspectors. The screening exercise was conducted in Bauchi and Azare accordingly.

6.7 In addition to the serving judges, new applicants were also invited and screened through written examinations and oral interviews. Similarly new applicants were also screened through oral interviews for the post of inspectors of Sharia Courts.

6.8 The other court personnel (registrars, clerks, messengers/bailiffs, cleaners and watchmen) were also screened in the Headquarters of the two zones, and suitable ones were recommended to JSC for postings.

6.9 To ensure a hitch-free take-off of the Sharia, the Task Force undertook tour to some court premises and residential quarters for judges and assessed their conditions in conjunction with team of experts from the State Ministry of Works.

6.10 To provide an alternative, pending the construction and/or renovations of existing courts by the Government, Local Government Councils were requested to provide courtrooms and quarters to judges as an interim measure.

6.11 Series of meetings were held with various Islamic aid groups on the unification of the groups to produce an effective *bisbab* which is the backbone of the Sharia itself. The Task Force subsequently continued its public enlightenment through the voluntary *bisbab* organisation in a peaceful and orderly manner.

6.12 Visits were made to their Royal Highnesses, the Emirs of Bauchi and Katagum and also to the Hon. Chief Judge, Hon. Grand Kadi, Commissioner of Police and Director State Security Services.

7.0 ACCOMPLISHED TASKS

The Task Force commenced its assignment from the date it was formed and inaugurated. It painstakingly and meticulously studied its terms of reference and the Government White Paper on Sharia and, within the period of its exercise, it has achieved/accomplished the following:

7.1 Establishment of State Sharia Commission. One of the terms of reference of the Task Force was to liaise with the State Government on the establishment of the State Sharia Commission. The establishment of the Commission was in line with the provision of the Government White Paper.

On this particular task, the Task Force proposed the draft of Sharia Commission Bill to the Government, which was later passed into law by the State House of Assembly and assented to by the Governor. It thus became a Sharia Commission Law and a copy can be seen in Volume II of this Report.

Guided by the law, the Task Force vide a letter NO. TFSI/BAS/ADM/S/SCM/V.1 /2 dated 29th March, 2001 proposed to the Governor membership of the Commission and requested him to nominate a representative of his office, two other members and a secretary to the Commission. The State Government studied our submission carefully and accordingly appointed the Commission with the following membership:

BAUCHI STATE SHARIA COMMISSION

- | | | |
|--|---|-------------------|
| 1. Malam Mukhtar Ahmed | - | Chairman |
| 2. Malam Hassan Dikko | - | Permanent Member |
| 3. Malam Muh'd Babangida Muhammad | - | Permanent Member |
| 4. Malam Tata Alkaleri | - | Permanent Member |
| 5. Malam Yakubu Muhammad (Sharia Consultative Council) | - | Part-Time Member |
| 6. Malam Jibril Muhammad | - | Part-Time Member |
| 7. Ambassador Adamu Yusuf | - | Part-Time Member |
| 8. Barrister Gurama Muhammad | - | Part-Time Member |
| 9. Barrister Aliyu Sange | - | Part-Time Member |
| 10. Representative of Governor's Office | - | Part-Time Member |
| 11. Representative of Hon. Grand Kadi | - | Part-Time Member |
| 12. Representative of Hon. Attorney-General | - | Part-Time Member |
| 13. 2 Representatives of the State Councils of Emirs | - | Part-Time Members |
| 14. Malam Abdulhamid Mu'Allayidi | - | Secretary |

7.2 Establishment of the Sharia Consultative Council. The Task Force was also tasked with the responsibility of recommending to the Government the membership of the Sharia Consultative Council. The Council is a body created by Section 9 of the Sharia Courts Commencement (Administration of Justice and Certain Consequential Changes) Law 2001. By Section 10 of the law, the membership of the Council is restricted to fifteen Islamic scholars, two of whom shall be legal practitioners qualified to practice in Nigeria for not less than ten years.

In exercise of the powers conferred on it by the Government, the Task Force on 26th March, 2001 wrote to the Government its proposal for some membership of the Council and requested the Governor to appoint a Secretary, one other member and also to appoint a Chairman to head the Council out of the fifteen members.

Pursuant to the Government's desire to ensure the successful implementation of the Sharia judicial system in the State, His Excellency, the Executive Governor, approved the constitution of the Council with the following membership:

BAUCHI STATE SHARIA CONSULTATIVE COUNCIL

- | | | |
|---|---|--------------------------------------|
| 1. Sheikh Dahiru Usman Bauchi | - | Part-Time Chairman |
| 2. Alh. Muhammad Dan Madami (Sa'in Katagum) | - | Part-Time Member/
Deputy Chairman |
| 3. Alh. Ado Musa Tafawa Balewa | - | Part-Time Member |
| 4. Sheikh Salisu Suleiman Ningi | - | Part-Time Member |
| 5. Sheikh Ja'afar M. Adam | - | Part-Time Member |
| 6. Malam Muhammadu Gidado Umar | - | Part-Time Member |
| 7. Dr. Ibrahim Tahir (Talban Bauchi) | - | Part-Time Member |
| 8. Dr. Yahaya Yero | - | Part-Time Member |
| 9. Malam Ibrahim Idris | - | Part-Time Member |
| 10. Barrister Abdul-Aziz Sabo | - | Part-Time Member |
| 11. Sheikh Mahmoud Shira | - | Part-Time Member |

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12. Malam Yelwa Azare	-	Part-Time Member
13. Malam Yakubu Muhammad	-	Part-Time Member
14. Ustadz Turaki Aliyu Misau	-	Part-Time Member
15. Malam Abdulhamid Mu'Allayidi	-	Secretary

7.3 Appointment of judges and inspectors of Sharia Courts. As spelt out in its terms of reference, the Task Force was tasked to liaise with the State Government, the Judicial Service Commission and the office of the Hon. Grand Kadi in respect of the appointment of Sharia Court judges and inspectors. The Task Force accordingly dealt with the appointment of Sharia Court judges and forwarded its recommendations to the Judicial Service Commission vide letter NO. TFSI/BS/ADM/VOL.1/75 dated 15th May, 2001. Similarly, it has also dealt with the appointment of inspectors of Sharia Courts and forwarded its recommendations to the Judicial Service Commission vide letter NO. TFSI/BS/ADM/VOL.1/90 dated 30th May, 2001. Please refer to Volume V for details.

In the case of the Sharia judges, 89 serving Area Court judges have been interviewed from whom 20 have been appointed by the JSC and posted as Upper Sharia Court judges one per each Local Government with the exception of Bauchi Local Government which has 2 and Bogoro Local Government which has none. Similarly, 43 out of the 89 serving Area judges have been appointed by the JSC and posted as Sharia Court judges one per each administrative district as approved by the Government White Paper on Sharia Implementation. 39 new Sharia Court judges have also been appointed for posting to major villages throughout the State.

In the case of the inspectors of Sharia Courts, eight serving inspectors of Area Courts have been interviewed and only one of them was found suitable for service under the Sharia judicial system. Similarly, seven out of the new applicants interviewed were found suitable and accordingly recommended to JSC for appointment.

7.4 Rationalisation of supporting staff of Sharia Courts. Consequent upon the interview and staff audit carried out by the Task Force on court registrars, clerks, messengers/bailiffs, cleaners and watchmen, it was observed that some of these categories of staff were unfit for service under the Sharia dispensation either because of low qualification or are otherwise not found suitable for the job.

On completion of selection and postings of qualified staff to areas designated as Sharia Courts or Inspectorate Offices, the Task Force submitted its recommendations to the Judicial Service Commission vide letter NO. TFSI/BS/ADM/VOL.1/112 dated 9th August, 2001 in line with the requirements of the Sharia Courts judicial system. Please refer to Volume V for details.

7.5 Office and residential accommodation for Sharia judges. In line with the provision of the Government White Paper on Sharia Implementation, the Task Force was to co-ordinate and oversee the general renovation and/or construction of court premises, residential quarters for judges and provision of working materials to the Sharia judges.

From the beginning of the exercise up to the time we compiled this report, with the exception of very few Government-owned court buildings, most of the courts in rural

areas were operating in dilapidated rooms without structural provision of dock, witness box and offices for the staff of the court.

To provide necessary input in respect of the above, the Task Force forwarded to the Government vide letter NO. TFSI/BS/ADM/VOL.1/89 of 16th May, 2001 a comprehensive submission indicating locations and bill of quantities for renovating/building the courts/residential quarters for the judges which were prepared and presented to the Task Force by the State Ministry of Works. See copy in Volume V for ease of reference.

In addition to the above, as a temporary measure, most of the Local Government Councils in the State have assisted by providing (where there are none) temporary courtrooms and residential quarters to Sharia judges and renovated the courts and residential quarters (where they exist) for the take-off of the system.

7.6 Welfare package for Sharia judges. In order to boost the morale of Sharia judges and raise their standard in the society, the Task Force recommended to Government the need to improve their remuneration through the payments of special allowances and other fringe benefits such as Government advances for purchase of personal vehicles and building of personal houses, etc. The recommendation is contained in the letter for appointment of the judges and can be seen in Annex.....of volume.....

7.7 Formation of *hisbah* organisation. The main term of reference of the Task Force was to co-ordinate activities pertaining to the take off of the Sharia judicial system in the State. Formation of *hisbah* organisation was one of these activities.

In its letter NO. TFSI/BS/ADM/VOL.1/85 dated 16th May, 2001 (see Volume V), the Task Force informed the Government on the necessity to form the *hisbah* organisation to aid in the effective enforcement of the Sharia.

The letter contains the definition, source and functions of the *hisbah* and the pre-requisites of making the *hisbah* effective in its operations in order to assist the Nigeria police in the discharge of their statutory functions under the Sharia judicial system adopted by the State.

7.8 Amendment/repeal of existing laws and drafting of new ones. In our letters Nos. TFSI/BAS/ADM/VOL.1/80 dated 23rd May, 2001 and TFSI/BAS/ADM/GO/VOL.1/10 dated 30th April, 2001, we forwarded to the Government draft bills in respect of the above for perusal and further necessary action as follows:

- (i) Bill for a law to establish the Sharia Commission
- (ii) Bill for a law to repeal the Liquor Law, Cap.85 Laws of Bauchi State.
- (iii) Bill for a law to amend the Bauchi State Penal Code Law Cap 108 laws of Bauchi State 1991.
- (iv) Bill for a law to amend the Bauchi State Sharia Penal Code 2001.
- (v) Bill for a law to amend the Sharia Courts Commencement (Administration of Justice and certain Consequential Changes) Law 2001
- (vi) A Bill for a law to amend the District Courts Law
- (vii) Bill for a law to amend the Rent Control and Recovery of Premises Law Cap 134 laws of Bauchi State 1991.

The rationale for the amendment/repeal of some laws and/or the draft of new ones were as follows:

A. AMENDMENTS

1. **Sharia Courts Commencement (Administration of Justice and Certain Consequential Changes) Law 2001.**

This law was amended to restrict the functions of the Sharia Consultative Council to only issuance of fatwa and any other matter as may be referred to it by Government or the Sharia Commission.

Previously, the Sharia Consultative Council was saddled with the responsibility of screening and recommending for appointment to Judicial Service Commission names of judges, in addition to their power of recommending disciplinary measures against either of the Sharia judges. The powers to screen, recommend persons for appointment to JSC as judges and to exercise disciplinary measures against them have now been transferred to the Sharia Commission.

2. **Sharia Penal Code 2000.**

(i) Section 148. This law amended to delete subsection (2) of section 148 of the Code, which allows the manufacturing, brewing, consumption or dealing in any way with alcohol in

- (i) Three-star hotels and above
- (ii) National and international touring and sporting centres
- (iii) Premises of Federal establishments such as military and paramilitary barracks;
- (iv) Local Government Areas dominated by non-Muslims.

The Task Force observe that by section 3 of the Sharia Penal Code Laws 2001 and section 5(iii)(a) of the Sharia Courts Commencement (Administration of Justice and Certain Consequential Changes) Law 2001, the Sharia Penal Code is applicable to **only Muslims**, who are prohibited in dealing with alcohol or alcoholic drinks in any way. Subsection (2) of section 148 however tends to allow even Muslims to deal with alcohol in the above-stated places.

A critical look at the subsection (i.e.) 148 (2) shows that it is in conflict with subsection (1) (i.e. 148(1)).

It was further observed that it was morally wrong to allow persons to come to the stadium or sporting centres with alcoholic drinks. Apart from corrupting the youth, it will encourage hooliganism in sports. Even in developed countries the idea of taking alcoholic drinks and drugs into sporting centres is prohibited.

(ii) Section 375. The section is amended to prohibit some social vices, which are becoming embarrassing and nuisances these days. It further prohibits playing with dangerous animals and/or implements.

3. **Penal Code Laws Cap 108 Laws of Bauchi State.**

- (i) Section 403. The section deals with the consumption of alcohol by Muslims. With the coming of the Sharia Penal Code, the section is no longer necessary. It is however now substituted with a provision prohibiting dealing with alcoholic drinks in predominantly Muslim towns and villages by non-Muslims.

4. **Rent Control and Recovery of Premises Law Cap 134 Laws of Bauchi State.**

By this law all rent cases are to be handled by the Rent Tribunal, which are only two in the State, one in Bauchi and one in Azare. Ultimately a lot of cases are presently pending before them without being disposed of.

Since under the present dispensation every Local Government Area is to have a District Court, it was felt that the above law be amended to confer on all District Courts the jurisdiction to try rent cases. This will decongest the cases which have piled up and will afford those in Local Government Areas easy access to courts.

Section 4 which created the Tribunal, is now deleted while the definition of court is now restricted to include High Court and District Courts. The definition of the term "Chairman" is now amended to read District Court judge.

B. NEW LAWS

1. **District Courts Law 2001.**

Formerly the Magistrate Courts adjudicated on criminal cases brought before them by the police. Most of the time, the police prefer to take their cases to Area Courts because they dispense justice quickly. However, the jurisdiction of the Magistrate and District Courts are limited. They cannot impose fines above ₦10,000.00.

Under the present dispensation Magistrate/District Court have **exclusive** jurisdiction to try non-Muslims. They are also to adjudicate in cases between Muslims and non-Muslims, responsibilities of trying Rent cases. This therefore calls for the review of the whole law to accommodate all the above considerations. Presently their jurisdiction have been increased to a maximum of ₦200,000. The District Courts Law Cap 42 of Bauchi State 1991 is therefore repealed and a new District Court 2001 Law is drafted in its place.

2. **Sharia Commission Law.**

This Commission was established when Government rejected the idea of a Ministry of Religious Affairs. The composition and functions of the Commission could be seen on pages 1, 2 and 3 of the draft. The powers to screen and nominate names of judges to the JSC as well as advice on discipline, suspension, termination etc. of a Sharia Court judge and

inspector of Sharia Court has now been transferred from the Sharia Consultative Council to the Sharia Commission. (See page 4 of the law). The Commission is to comprise of the Chairman and twelve (12) other members, with an executive secretary who is also to serve as the secretary of the Sharia Consultative Council.

C. REPEAL

1. **Liquor Law Cap 85 Laws of Bauchi State 1991.**

By the above law, the Governor of the State is given powers to grant licenses for the sale of alcohol in designated areas of the State. For this purpose, the State is divided into 3 areas viz: (i) Prohibited Areas, (ii) Licensed Areas and (iii) Restricted Areas (see section 4 of the law).

With the enactment of the Sharia Penal Code and the amendment to section 403 of the Penal Code, it is our opinion that the law was no longer useful. That informed the recommendation for its repeal and it was so repealed.

7.9 Control and supervision of Sharia Courts. By section 30 (1) of the Sharia Courts Commencement (Administration of Justice and Certain Consequential Changes) Law 2001, the general supervision and control of the Sharia and Upper Sharia Courts in the State have to be transferred from the Hon. Chief Judge to the office of the Hon. Grand Kadi.

On 28th June, 2001, the Task Force vide letter NO. TFSI/BS/ADM/VOL.1/99 dated 28th June, 2001 forwarded an instrument of transfer to that effect to His Excellency, the Executive Governor of Bauchi State, for approval because section 6(c) Part II of the third schedule of the 1999 Constitution of the Federal Republic of Nigeria vests such powers to the Judicial Service Commission and with the approval of the Governor, such powers could be transferred by the JSC to any officer or authority as provided by section 12(i) and (ii) of the Bauchi State Judicial Service Committee Law Cap 75 laws of Bauchi State 1991.

In exercise of the powers conferred on him by the above section of our State laws, the Executive Governor approved such transfers on 28th June, 2001 and the approval was forwarded the Hon. Chief Judge and Chairman, Judicial Service Commission on 2nd July, 2001 vide letter NO. TFSI/BS/ADM/VOL.1/100.

With the approval of the Governor, the Hon. Chief Judge, after discussing with the members of the State Judicial Service Commission, signed the legal instrument prepared and sent to him by the Task Force to that effect, and the process of the formal transfer was completed with the conveyance of such instrument to the Hon. Grand Kadi. The Sharia and the Upper Sharia Court of Bauchi State are now under the control and supervision of the State Grand Kadi.

7.10 Production and distribution of relevant laws. Following the successful passing into law of our various draft bills by the Bauchi State House of Assembly and the subsequent assent of His Excellency in respect of these laws, all the legislations have now become

the Bauchi State laws and therefore enforceable on persons and group of persons within the State.

Although the Government had directed the State Ministry of Justice to gazette and print these laws, for the purpose of the immediate take-off of the Sharia judicial system in the State, the Task Force took the pain of printing copies from the computer and took them for spiral binding. Thereafter, the laws were distributed to the Sharia Courts for adjudication, the Nigeria Police Force for enforcement and to the other relevant bodies for appropriate action.

7.11 Extension of time/progress report. One of the main terms of reference of the Task Force was to ensure that all necessary groundwork for the take-off of the Sharia judicial system in the State was put in place before 31st March, 2001.

On the 26th of March, 2001, the Task Force wrote to His Excellency, the Executive Governor of Bauchi State, and informed him on the progress made by the Task Force from 27th February to 26th March, 2001. In consideration of the magnitude and enormity of the task assigned to it, the Task Force reviewed all the necessary groundwork to be undertaken for a smooth and hitch-free take-off of the Sharia judicial system and requested for extension of time up to 31st May, 2001 to achieve the said objectives. The request was also in line with the provision of the Government White Paper on Sharia Implementation which originally allocated three months period for the Task Force assignment.

The Government accordingly extended the deadline to 31st May, 2001 so that Sharia could take off without hitch in all parts of the State on 1st June, 2001.

On 30th May, 2001, His Honour Alhaji Abdulmalik Mahmoud, the Deputy Governor of the State wrote vide letter NO. GO/SS/REL/1/S informing the Task Force that it was mandated by the Government to perform the functions of the Sharia Consultative Council until the Council and the Sharia Commission were constituted. In the same letter, another mandate was given to the Task Force to notify the public that the Sharia judicial system would take off on the 1st June, 2001 as scheduled. Copy of the letter is annexed in Volume V of this report.

On the receipt of the letter mentioned above, the Task Force held a press conference on 31st May, 2001 and gave out its progress report and announced the take-off of the Sharia judicial system as directed by the Government. Copy of the Chairman's speech in respect of the said conference is annexed in Volume V for ease of reference.

On 26th July, 2001, the Secretary to the State Government vide letter NO. GO/SS/REL/S/1 informed the Task Force that the State Sharia Commission had been duly constituted by the Government. He therefore requested that the Task Force should prepare to hand over to the Commission on 14th August, 2001. Copy of the letter can be seen in Volume V.

8.0 OUTSTANDING WORK

In spite of all the achievements recorded by the Task Force throughout the period of its assignment; there are still so many things to be done in order to strengthen the actualisation of Sharia judicial system. For the purpose of continuity, such things are

specified hereunder for the guidance of the newly established Sharia Commission and Consultative Council. Some of these outstanding work include the following:

8.1 Amendment to all relevant State laws to conform with Sharia. To further strengthen the Sharia judicial system, there is the need to peruse and analyze the State laws. Where necessary, some of the existing laws of the State have to be amended to conform with the Sharia judicial system. All legal loopholes should be blocked to avoid misinterpretations.

8.2 Promulgation of Sharia Civil Procedure Rules by the Hon. Grand Kadi (draft already prepared). Already the Task Force (through its Legal Sub-Committee) had prepared/drafted the Civil Procedure Rules (see the draft in Volume V of this report) for the Hon. Grand Kadi to peruse and promulgate into law. It is therefore hoped that the Sharia Commission would speed up the matter in view of its relevance to civil adjudication under the Sharia judicial system.

8.3 Promulgation of Sharia Criminal Procedure Code by the State House of Assembly (draft already prepared). In addition to the Civil Procedure Rules, the Task Force (through its Legal Sub-Committee) had prepared the draft of the Sharia Criminal Procedure Code. However, unlike the Civil Procedure Rules which could be promulgated into law by the Hon. Grand Kadi, the Sharia Criminal Procedure Code has to be passed into law by the State House of Assembly and assented to by His Excellency the Executive Governor of Bauchi State before it becomes operational.

Considering that the Sharia judges have already been issued with the new Sharia Penal Code Law, there is the great need for the Commission to ensure the speedy promulgation of the Code for adjudication of criminal cases. Copy of the draft Sharia Criminal Procedure Code can be seen in Volume V for guidance.

8.4 Establishment of model Qur'anic school and nursery/kindergarten classes in all primary schools for teachings of Arabic and Islamic Studies. In paragraph 3.3.3 of the White Paper, Government had accepted to establish nursery/kindergarten classes in all the primary schools in the State with emphasis on Arabic and Islamic Studies, and the medium of instruction shall be the vernacular. It also accepted to establish model Qur'anic schools to complement the traditional Qur'anic school system of education in the State.

The Sharia Commission should study the Government White Paper carefully and pursue the establishment of such institutions as a matter of urgency.

8.5 Review of content of primary and secondary school curriculums to emphasise the teachings of Arabic and Islamic Studies. In paragraph 3.3.4 of the White Paper, Government accepts to review the contents of primary and secondary schools curriculums to emphasise the teachings of Arabic and Islamic Studies side by side with Western education.

The Government also accepts to make Arabic language compulsory for Muslim pupils in all primary and post-primary schools in the State. Pursuant to the above, a board for Arabic and Islamic Studies was also agreed to be established by legislation under the Ministry of Education. It is recommended therefore that the Sharia

Commission should take up the issue appropriately to a satisfactory and successful execution.

8.6 Evolution and enforcement of new dress code for male and female students in private and public primary and post-primary institutions in the State. In addition to the review of the content of school curriculums, Government (in the same paragraph 3.3.4 of the White Paper) decided to take positive steps in response to widespread complaints on the very unsuitable nature of both male and female modes of dressing both in public and private primary and post-primary institutions in the State. Consequently, Government had decided to evolve and enforce a new dress code. The Sharia Commission should therefore pursue these vigorously.

8.7 Translation of all legislation on Sharia into Arabic and Hausa Languages and be given wide coverage in all media in the State. In paragraph 4.0(iii) of the White Paper, Government noted the recommendation for translation of all legislation on Sharia in Arabic and Hausa languages and be given wide coverage in all media houses in the State. The Sharia Commission should therefore follow up the issue seriously until the success is recorded in that direction.

8.8 Establishment of Zakat and Endowment Fund Board. In paragraph 4.0(iv) of the White Paper, Government accepted to establish Zakat and Endowment Fund Board to cater for the welfare of the destitute and the needy in the society but resolved to refer the matter to the Sharia Commission when it comes into existence. As the Commission had been constituted, there is the need to facilitate the realisation of this objective.

8.9 Separate mode of transportation for men and women. In paragraph 4.0(v) of the White Paper, Government accepted to refer to the Sharia Commission the introduction of separate transportation for men and women as well as to direct the Local Governments and private sector to contribute to the success of the program. The Commission is to pursue this matter to conclusion.

8.10 Regulation of street hawking. In paragraph 4.0(vii) of the White Paper, Government took serious note of the necessity to regulate street hawking particularly by girls in order to safeguard public morality but decided to refer the matter to the Sharia Commission for further action.

8.11 Workshop for all categories of government officials and law enforcement organisations. It is the duty of the Government to ensure that all its officials and law enforcement agents are Sharia compliant. There is therefore the need to organise a workshop for all these personnel to keep them well informed on their duties under the Sharia judicial system.

8.12 Workshop for all Sharia and Upper Sharia judges. Considering that the Sharia has become almost a new code to our judges who are either newly appointed or were used to the Area Courts System, there is the need to re-orient them in line with the new dispensation. Already, the Task Force had commissioned some experts (Al-Bukar (Nig) Limited) and the company gave out an estimate of ₦450,000.00 which has already been released by the Government. However, the workshop could not be held as a result of lack of provision for the NATA of the judges. The Commission should therefore organise the workshop.

8.13 Workshop for members of hisbah. The *hisbah* organisation is the backbone of the Sharia judicial system. The main function of the organisation is to assist the Nigeria Police Force in the discharge of its duties of law enforcement. Considering the sensitivity of their operations, the Sharia Commission is thus called upon to enlighten all members of the organisation through workshop.

8.14 Introduction of weights and measures. The Judicial Structure and Personnel Sub-Committee of the Bauchi State Sharia Implementation Committee intended to inspect market premises to discuss with traders and recommend to the Government the appropriate scales and measures to be used by traders in transacting business in conformity with what obtains in all Sharia countries the world over. However, the Sub-Committee was unable to incorporate such recommendations in its report. In view of that, the Commission is now called upon to take necessary action in this regard.

9.0 SUSTENANCE OF SHARIA

The constitution of the Sharia Commission and the Consultative Council is aimed at sustaining the system permanently as in keeping with Allah's command. Sharia is the practical expression of Islam as a way of life. The preservation of Islamic culture and traditional values is a direct way of enforcing the Sharia practice. The most immediate contribution Muslims can make towards reinforcing Sharia is to maintain an awareness of our future as a body or *ummah* starting from individuals and extending to communities until it encompasses the *ummah*, the international brotherhood of Islam.

The future of Muslims, therefore, lies in our rediscovery of our individual selves and then consciously striving to assert our identity in our way of life which is the Sharia. The primary aim of individual Muslims should therefore be to train his "self" or "ego" to match the strength of steel, which he can only achieve by behaving as a *mu'min*. A *mu'min* is a believer in Islam who practices the Sharia in its entirety and whose belief pervades all his actions. It is thus one of the primary functions of the Commission to provide facilities through *da'awah* and sustained public orientation and non-formal Islamic education programme, for the inculcation of such a spirit of self-awareness in individual Muslims.

10.0 IMPLEMENTATION OF SHARIA

The success of Sharia implementation invariably depends on the intellectual quality and ability of the judges and other court staff interpreting it and administering it. Implementation of Sharia virtually means the enforcement of the Islamic law with particular reference to *hudud*, *qisas* and *ta'azir* offences and payment of compensation (*diyab*) instead of *qisas* (retaliation) as well as the enforcement of judgments in civil and personal cases.

Hudud offences include the following:

- (a) Adultery or fornication (*zina*)
- (b) False accusation to defame character (*qazaf*)
- (c) Drinking intoxicants (*sharbul-keharr*)
- (d) Theft (*sariqah*)
- (e) Robbery (*hirabah*)

- (f) Treason (*baghyi*)
- (g) Apostasy (*ridda*)
- (h) Intentional Homicide (*qatl-al-'amd*)
- (i) Unintentional Homicide (*jash-al-kebata*)
- (j) Intentional body injury (*jash-al-'and*)
- (k) Unintentional injury (*jurh-al-kebata*)

Against all these offences Allah (SWT) has prescribed specific punishments (*uquba*). *Qisas* offences include all offences of bodily hurt or injury in which the Divinely prescribed punishment is retaliation such as loss of limbs, eyes, nose, ears and other grievous bodily injuries in which the victim has the option to demand for compensation (*diyab*) instead of retaliation (*qisas*).

Ta'azir offences include all other offences against which imposition of punishment is left to the discretion of the presiding judge, such as criminal breach of trust, forgery, currency counterfeiting etc. Sharia is not, however, confined to only *budud*, *qisas* or *ta'azir* offences which together constitute only about one-fifth of the whole body of Divine Laws, but is also a complete way of life for all Muslims and includes absolute obedience to Allah the Exalted and His Messenger, Prophet Muhammad (SAW), respect for and kindness to parents, kindness to children and the aged, good neighbourliness, honesty and truthfulness. It also includes rules about marriage relationships, property and land disputes and guardianship of orphans and *waqf*.

Under the Islamic legal system only the *budud*, *qisas* and *ta'azir* offences and civil cases pertaining to property and land disputes and personal law matters regarding marriage, inheritance, *waqf* and guardianship of orphans need the intervention of the Sharia Courts. Obedience or not to all other body of Divine Laws depends entirely on the degree or strength of the faith of each individual and his relationship with his creator.

These Sharia criminal offences although already codified in the Holy Qur'an are again codified in the Sharia Penal Code of Bauchi State as required by section 36(12) of the 1999 Constitution.

11.0 ENFORCEMENT OF SHARIA

The pre-requisites for effective enforcement of any law include: an efficient and loyal law enforcement organisation; a virile, well informed and responsive citizenry; a well-organised judicial system administered by honest and Allah-fearing judges and an articulate, dynamic, pragmatic and Islamically-oriented executive and legislative arms of government.

It is the constitutional responsibility of the Nigeria Police under the Police Act to enforce all laws and regulations made by the National Assembly, House of Assembly of a State or Local Government Councils. Thus, it is the binding duty of the Nigeria Police Bauchi State to enforce the Sharia Penal Code Law 2001 of Bauchi State.

Under the provisions of section 215 sub-section 4 of the 1999 Constitution "the Governor of a State or such Commissioner of the Government of the State as he may authorise in that behalf, may give to the Commissioner of Police of the State such lawful directions with respect to the maintenance and securing of public safety and public order

within the State as he may consider necessary and the Commissioner of Police shall comply with those directions or cause them to be complied with....”

The attention of the Commissioner of Police should therefore be drawn to his constitutional responsibility to enforce the provisions of the Sharia Penal Code being a law made by the House of Assembly. Adequate use should be made of the *bisbab* organisation to facilitate flow of information to enable effective enforcement.

12.0 CONCLUSION

We, the members of the Task Force on Sharia Implementation, would like to use this opportunity to once again thank His Excellency the Executive Governor, Alhaji (Dr) Ahmadu Adamu Mu’azu and his Government for giving us the opportunity to serve in the Task Force. We hope our humble contribution has positively helped in the historic implementation of Sharia which took off with effect from 1st June, 2001 throughout the State. We also thank the Chief Judge Alhaji Suleiman Darazo, the Grand Kadi, Alh. Ahmad Rufa’i Ibrahim and the Judicial Service Commission for their unfailing support and cooperation without which our work would not have been so successfully accomplished. We thank the Deputy Governor, the Secretary to the State Government and the Head of Service for their cooperation and guidance. We are also grateful to the Emirs of Bauchi and Katagum for their fatherly advice and moral support. We thank the Chairman of Katagum Local Government for his hospitality during our visit to Azare and all other Local Government Chairmen for their support and cooperation in attending to our numerous requests in the course of our assignment. We cannot forget the wonderful contribution of the Ministry of Works in painstakingly preparing and costing estimates of proposal court buildings and residential quarters for Sharia Court judges which we recommended to government. Members of all Muslim organisations, aid groups and *bisbab* organisation and the general public also deserve our appreciation for the interest shown and their contribution to the successful take off of Sharia. We are most grateful to all media houses, their chief executives and staff especially the BATV for their effective coverage of our activities. Finally we thank all members of the Task Force, the Secretary, Alh. Habibu Idris Shall, the Deputy Secretary Alh Ali Babyo Gamawa and the entire staff especially secretarial staff for their dedication and good quality production. May Allah shower His blessings on all.

[Members of the Task Force again listed as in § 5.1 above, with signatures.]