

Chapter 2 Part III

On the Adoption and Implementation of Sharia Legal System in Zamfara State

A paper presented at the JNI-sponsored seminar on Sharia in Jigawa State

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This paper is intended to be without details but straight to the point on the practical experience of Zamfara State in the adoption and implementation of the Sharia legal system in the State. The sequence of the steps followed and the problems/successes attained will be highlighted as well as the lessons learned for the benefit of other States willing to follow suit.

Introduction

Islam has existed in Northern Nigeria since the 9th century when Arab merchants had trade contacts with Borno Caliphate, spreading through Kano. By the 19th century the Usman Dan Fodio *jihad* had entrenched it in Sokoto Caliphate which spread to the south through Ilorin. British colonial administrators did not like the legal system they found in Northern Nigeria and so gradually enacted laws and made policies which restricted the strict application of Sharia laws because such laws were not acceptable to the modern world.

Post-independence governments in Nigeria continued to maintain the laws and policies which effectively prevented the adoption of full Sharia. Constitutional Conferences and debates were frustrating as relates to Sharia, and attempts by some radical Islamic sects to demand for Sharia were violently suppressed. It was not until about 100 years later that God wished and guided the Zamfara State Government to successfully adopt Sharia in a peaceful and constitutional manner.

The Steps Followed

1. *Committee Established:* The Executive Governor of the State Alhaji Ahmed Sani (Yariman Bakura), desirous to fulfil his campaign promises and the wishes of the people to adopt Sharia, established an 18-member committee to:

- i. examine and review all existing laws with a view to conforming with the traditions, culture, values and norms of the people;
- ii. examine and review the structures and control of Area Courts in the State;
- iii. facilitate effective administration of justice in the State.

The Committee submitted its report and made crucial observations especially on constitutional provisions relating to fundamental human rights, etc. Government accepted the report and my ministry was briefed to find out the “one best way” to adopt the legal system peacefully and without violating any provisions of the Constitution.

2. *Enabling Law*: This is the law established under section 6 of the 1999 Constitution that enables the State to adopt the Sharia legal system. It is called the Sharia Courts (Administration of Justice and Certain Consequential Changes) Law, 1999. Its other attributes include:

- i. establishes Sharia Courts;
- ii. confers civil and criminal jurisdiction in Islamic law in the courts;
- iii. enables the codification of Islamic penal laws (Sharia Penal Code) to satisfy the requirement of section 36(12) of the Constitution;
- iv. enables the codification of Sharia Criminal Procedure Code;
- v. allows for the repeal of existing Area Courts;
- vi. allows for the establishment of a State Council of Ulama; and
- vii. provides for the administration, control and supervision of Sharia Courts initially vested in the Chief Judge, it is divested of him and vested in the Grand Kadi with effect from 29/06/2000.

3. *Government Policy Statement*: Meanwhile, Government made policy statements to curb all social vices, moral decadence and check rising crime wave by serving notice of intention to:

- i. prohibit prostitution and close down brothels in the State;
- ii. ban all forms of gambling and all games of chance;
- iii. [ban] consumption and dealings in liquor.

These policy statements drastically reduced the level of crime and consequently made the courts and police stations less busy.

4. *The Sharia Penal Code*: To satisfy the mandatory requirement of section 36(12) of the 1999 Constitution which requires that a person cannot be prosecuted for a criminal offence unless that offence is defined and its punishment is prescribed in a codified law to be passed by the legislature. We gathered inputs from the Sudan and Saudi Arabia of the Maliki School of Islamic legal thought and jurisprudence. All crimes and punishments were classified under *hudud*, *qisas* and *ta'azir* categories defined and punishable in accordance with Islamic law, as far as possible. (For reasons to be given later, the offence of apostasy (*ridda*) had a different treatment.) So amputation, caning, stoning to death, payment of diyah and forgiveness of homicide by relations of the victims became features of the new legal system in the State.

5. *The Sharia Criminal Procedure Code*: This is the code that provides for the procedure for prosecution of offenders and execution of judgement in the Islamic law model. The Sharia Penal Code is to the Penal Code what the Sharia Criminal Procedure Code is to the Criminal Procedure Code.

6. *Area Courts Repeal Law*: This is the law that repealed the then existing Area Courts and their enabling law in the State since they have been replaced by Sharia Courts.

7. *Sharia Court of Appeal Amendment Law*: Section 277 of the 1999 Constitution restricts the jurisdiction of the Sharia Court of Appeal of a State to matters of Islamic personal law. Since the established Sharia Courts have been conferred criminal jurisdiction and appeals from these courts exclusively lie to the Sharia Court of Appeal, it became necessary to expand the jurisdiction to entertain criminal appeals from Sharia Courts.

To argue that such jurisdiction can not be enlarged is to argue in favour of denying an appellant (e.g. convicted and sentenced to amputation) the right of fair hearing at the appellate division. In other words, the Constitution provides for the establishment of Sharia Courts, with criminal jurisdiction, the provision of penal laws and punishments, the due process of law which led to his conviction and sentence, but without an appellate court to hear his appeal.

8. *Other Laws/Policies:*

- i. Anti-corruption Commission Law. The commission has no power to prosecute, arrest or detain any person. It merely investigates allegations of corrupt practices against public servant at administrative levels only and reports to the executive for appropriate action. Such practices include over-invoicing, kickbacks, wrongful administrative action, injustice etc.
- ii. Zakat and Endowment Law. For the collection and distribution of *zakat* and a tribunal to sanction defaulters etc.
- iii. Marriage Expenses and Other Ceremonies Law. Regulates and reduces to the minimum marriage expenses.
- iv. Banning of traditional drums beating and praise singing. However exceptions are royal or farm drummers.
- v. Introduction of Government-approved standard weights and measures for use in commercial measurements in the State.
- vi. Observance of congregational prayers by civil servants in appropriate prayer time slots during office hours.
- vii. Appropriate dress code for women – the *hijabi*.
- viii. Rehabilitation and education of *almajiris* etc.

9. *Transition Period/Launching:* It is very necessary to create a transition period as was done in Zamfara, Sokoto, Niger and Kano States. This period (from 3 to 6 months) will enable smooth transition especially with the backlog of existing cases being heard in the old courts. Other advantages include:

- provides a period of screening and appointment of qualified alqalis both in learning and in character;
- construction of new courts or renovation of existing ones;
- training the alqalis, workshops etc.;
- provision of logistics support like books etc.;
- public education and enlightenment on Sharia etc.;
- allow for proper “handing over” from the old to the new system.

Launching the adoption of Sharia merely has symbolic significance, even though it serves a great deal in drawing an imaginary line between the past and the new beginning under Sharia. It reminds all and sundry that the day for the launch is just not any other day. Besides, it gauges the response of the people and the level of their commitment, sacrifice and acceptance of the legal system. A peacefully concluded launch, as in Zamfara and Kano, further disproves cynics who blame violence on Sharia and vindicate others who insist that the Kaduna violence has nothing to do with Sharia since it was neither adopted nor launched there.

10. *Other Necessary Conditions/Dos:*

1. Continuous education and enlightenment.
2. Respect of constitutional provisions so as to at least live to see the benefits of Sharia since litigation will be eliminated.
3. Peace and orderliness must reign, else Sharia will not take hold.
4. Respect Federal laws.
5. Mobilise the masses, imams, scholars and go together in a united stance.
6. Make best use of Friday congregational prayers to pass the word around.
7. Seek and obtain co-operation and support of the legislature/executive.
8. Be prepared to sponsor private bills on the Sharia laws especially the enabling and Penal Code Laws where number 7 above fails.
9. Provide for Joint Aid Groups to complement efforts of police.
10. Establishment of Ministry or Department for Religious Affairs (to represent all religious groups in the State.)

11. *Anticipated Problem Spots:*

- The offence of apostasy and section 38(1) of the Constitution.
- Prosecution by an uncooperative police under the Federal Government.
- Non-application of Sharia laws on non-Muslims must be maintained (Qur'an 2:256).
- Fundamental Human Rights provision especially the right to life and against torture/degrading treatment.
- Evidence under jurisdiction of the National Assembly.
- Criminal jurisdiction of the Sharia Court of Appeal.
- Codification of penal laws/punishments.

12. *Gains So Far (Excluding Capital Projects):*

- Drop in crime statistics.
- Less busy courts/police stations.
- Closure of all cinema theatres and beer parlours (except military barracks that was hitherto resisted).
- Controlled financial wastage and fraudulent practices.
- Ability to save enough to afford payment of minimum wage of ₦5,000 since 1st January 2000.
- Wealth redistribution.
- Phase II of Sharia with emphasis against bad habits like telling lies, backbiting and deceit/cheating in the public and private sectors.
- General orientation on the habits of observing congregational prayers at the proper times.
- Well-paid and motivated al-kalis.
- General re-orientation of the people towards the fear of Allah, the keeping of trust, the recognition of the difference between good/*halal* and bad/*haram* in every-day conduct.

13. *Pressure on the State/the Sharia Controversy:* The State went through unbearable pressure from CAN, the media, the Federal Government and other States (including States in the North who drew back on their commitment to adopt the legal system). Allah's guidance

and the high level of commitment/determination of the people and the Government saw us through. The belief of following a legal, peaceful and constitutional procedure reinforced our determination as we were to be later vindicated by the Federal Attorney-General. CAN later saw good reason and withdrew its suit against the State Government. The suits filed by civil rights organisations were struck out on grounds of lack of *locus standi* to challenge what does not affect you as a non-Muslim and non-resident in Zamfara State.⁵⁷ Media pressure still persists but at a lesser degree since other States like Kano, Sokoto, Niger now share in the pressure with Zamfara State.

Controversy has been generated by the antagonists of Sharia largely out of ignorance of what Sharia is, or out of bad faith and hatred for Sharia. They wrongly rely on section 10 of the Constitution, which does not make Nigeria a secular state. They refuse to appreciate that section 6 of the Constitution empowers the legislature to establish any court with jurisdiction to try and punish offenders under a codified law. And that section 38 allows for the observance of religion to the fullest.

Since Islamic law was cleverly replaced over time by the common law (which is largely Christian in orientation and reflective of Western values); and since the common law has failed to be effective in checking the rise in crime and moral decadence; it became necessary to try another alternative legal system that is a divine, comprehensive, universal and complete code of practice covering social, economic, political, spiritual and legal conduct of a Muslim from cradle to grave, including the aspect of the hereafter.

The adoption of Sharia by any person or State that professes the Islamic faith is not a question of choice. It is compulsory especially with the advent of democracy, constitutionalism and a federal system of government that provides the opportunity. Allah has stated in Qur'an 5:4, 5:45 and 5:47 that:

Whosoever judgeth not by that, which Allah hath revealed, is respectively referred to as unbelievers, wrongdoers and evil-livers. [sic]

Muslims in Nigeria have sacrificed enough by compromising the fullest observance of their religion over the years. Other non-Muslims should understand, appreciate and reciprocate these sacrifices by at least respecting the right of Muslims to adopt Sharia that does not affect them. The time has come and the people of Zamfara State have reached the limits where they demanded and insisted on their fundamental right to observe their religion as decreed by Allah and guaranteed by the Constitution. The

⁵⁷ The reference is to *Human Rights Law Service vs. Attorney-General of Zamfara State and Another*, No. ZMS/GS/M.36/2000, filed in the High Court of Zamfara State early in 2000 by a Lagos-based group (Human Rights Law Service, or Hurilaws, as to which see www.hurilaws.org). The suit challenged Zamfara State's programme of Sharia implementation on many grounds. The High Court quickly ruled that the plaintiff lacked *locus standi* and dismissed it. Three other virtually identical suits were filed at about the same time by individuals resident in Zamfara State, all Christians, all represented by the same Lagos-based lawyer (Olisa Agbakoba). These were consolidated under the name of *Yunana Shibkai, Dr. Emman U. Shebu and Evangelist D. Ishaya vs. Attorney-General of Zamfara State and Attorney-General of the Federation*, No. ZMS/GS/M.121/2000. After a year's maneuvering they too were dismissed by the High Court for lack of *locus standi* in the plaintiffs (1 February 2001). The dismissal was appealed to the Kaduna Division of the Court of Appeal, No. CA/K/321/2001. As of late 2006 the case was still pending and yet to be argued.

Muslims in southern parts of Nigeria suffer greater denial of this right, as the present system does not even allow them to regulate their conduct Islamically.

The Way Out

The way out is through constant dialogue between the protagonists and antagonists of Sharia. Good faith, respect for others' rights and beliefs and recognition of Nigeria as a pluralist society that is unified in diversity, will help. Non-Muslims must have the courage to reciprocate the respect which the Muslims have for Christian beliefs.

The Alternative

Failing the above, the only alternative is for all competing parties to agree to discard the alien common law and replace it with Sharia for Muslims, cannon law for Christians and customary law for the traditionalists as the basic laws for the country. Much of this was passed across by Governor Ahmed Sani and appreciated by the audience at an International Seminar on Sharia, Democracy and Conflict in Nigeria organised by the VOA in Washington in May 2000.

Conclusion

It is now accepted that the adoption of Sharia is constitutional. Evidence from Zamfara, Sokoto, Niger States and more significantly from the volatile Kano State show that violence is not part of Sharia, neither were the rights of non-Muslims affected thereby. While the Federal Government can not come between a Muslim and his God, so also must every governor, legislature and the judiciary in any of the 36 States of the Federation respect the wishes of its people (majority or minority) to practise and observe their religion **TO THE FULLEST**.

May Allah forgive us where we have erred and guide us through the right path.

Thank you.