

“Shariah and Good Governance”

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**The Implementation of Shariah by
Democratic Means: The Nigerian Experience**

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Complimentary Introduction

Following nearly 16 years of military rule in Nigeria, a new constitution was adopted in 1999, and a peaceful transition to civilian government was completed. After years of squandered revenues through corruption and mismanagement Nigeria is coming to life. The April 1999 elections marked the first civilian transfer of power in Nigeria's history by the actions of its ordinary citizens, many of who are Muslims.¹ Disdained by the former military rulers who robbed the nation, reforms are being undertaken to administer a new civil and productive society, much of which is grass-rooted by Nigerian Muslims.

As a scholar and representative of the American Muslim community, I share with my fellow Muslim brethren worldwide in applauding the Nigerian experience to select Islamic Shariah as the basis to reconstruct the nation. You are rightfully bringing the ideology of a “democratic Islam” to the forefront.

Allah says: ***“This day I have perfected your religion for you, completed My favor upon you, and have chosen for you Islam as your religion.”***²

¹ Depending on the source:

Nigerian Muslim population 80%; at <http://www.eia.doe.gov/emeu/cabs/nigeria.html> (last visited June 17, 2004).

Or: Nigerian Muslim population 50%; at <http://www.cia.gov/cia/publications/factbook/geos/ni.html> (last visited June 17, 2004).

² Qur'an 4:3. ABDULLAH YUSEF ALI, THE MEANING OF THE HOLY QUR'AN, New ed., Amana Corporation trans. (1989).

Many around us are not comfortable with the progressive changes being made by Muslims. I highly encourage the Nigerian ummah to continue forward. I commend the ummah's valor and have no doubt that your nation will triumph under Islamic rule. Let it be known through your gallant work that Islam reflects the common interest of the world, of the nation, of the community and of the family. It is not a self-serving faith; but rather, a consort of fellow brethren that transcends racial, ethnic, gender, and socio-economical status.

Prophet Mohammad was quoted to have said: *"Muslims are equal like the teeth of a comb."*

The Prophet has also said: *"There is no merit for an Arab over non-Arab, nor for white over black except for righteousness."*

Much of the world is watching Nigeria with skepticism and looking for a window of opportunity to topple a nation built on Islamic principles. Much criticism has been related in the media worldwide. Such as, rumoring Islam as prehistoric and a vice towards modernism. Some nations will capitalize on your weaknesses and welcome your downfall. For the most part, your great strides will be overshadowed by small incidents, but let not the ill whisper of other nations or yellow journalist deter you from seeking the rightful path. Islam is the path that provides a sound foundation for civil and political stability, and economic growth. Islam does not separate the secular from the spiritual. It is a trio of state, mosque and citizenship. Assure the world that Islam is neither a threat nor an enemy.

Also keep in mind that Islam is not an inoculation against vices and ills. People are born with weaknesses and faults, and thus prone to make mistakes.

Your duty will be to overcome and cover-up insignificant shortfalls; not permit others to exploit them.

Shariah and Good Governance

The theme of an Islamic society is built on the notion of justice and equity.³ If a nation fails to administer justice then inevitably it will deliver injustice. In order to build a sound society a systematic framework must be structured. Thus the basic premise of an Islamic state is an ever-revolving domain, applicable to government and politics. Its major inter-components, such as economics, judiciary [Shariah], and social order are sophisticatedly correlated, and in part, contribute to other components within society, such as preventing corruption, applying fair penal codes, providing rehabilitation and alternative solutions to immoral establishments, eliminating nepotism, honoring and commissioning experts, and facilitating economic and technological growth.

The foundation of an Islamic (or “democratic”) government has already been set over fourteen hundred years ago. However, today there is not an idealized Islamic state to refer to as the model, but that is not to say it would be utopia for one to exist. Highlighted Islamic states did once exist and can function again in contemporary times. Some Muslim nations are making great efforts to epitomize the example of an Islamic state. Nonetheless, the purpose of this dissertation is to investigate some of the issues that plague Islamic nations, in

³ Imam Ali’s Epistle to Malik Ashtar has said: “The subsistence of States depends on justice. Justice is the best policy.” IMAM ALI’S EPISTLE TO MALIK ASHTAR, Tak Printing House, reprinted 1984.

particular Nigeria, and aim to provide a humble perspective to enhance the system within the context of its social complexity.

The process of deriving Shariah legislative components for an Islamic state is based on four sources:⁴

1. Holy Qur'an.
2. The tradition of Prophet Mohammad.
3. Consensus of Muslim jurists (*mujtahideen*).
4. Reason.

Although set over fourteen hundred years ago the four derivative Shariah sources remain applicable and suitable to all times. Closely related to the democratic process of election of some non-Islamic states, many Islamic states embody members of parliament, who are voted in by the people, thus become representatives of the people, who in turn work closely with a council of Muslim jurists to legislate or amend constitutional provisions. Contrary to the notion that Islam is a fixed and rigid system, when untarnished, Islam's four vibrant legislative principles facilitate the wheel of progress. Emergent Islamic constitutions are freethinking entities, they never hinder development nor do they allow circumstances to go unanswered.

Nonetheless, applying all Islamic rules is not recommended when an Islamic state is in its infancy. Islamic laws and regulations must be applied accordingly and respectively to the nature of the society. Policies must not be too

⁴ According to the Jafaria school of thought.

To add, the Qur'an states: "O ye who believe! Obey Allah, and obey the Messenger, and those of you who are *olol-amr* (endowed with divine knowledge); and if ye have a dispute concerning any manner, refer it to Allah and the Messenger." Qur'an 4:59. ABDULLAH YUSEF ALI, THE MEANING OF THE HOLY QUR'AN, New ed., Amana Corporation trans. (1989).

severe and harsh, nor too lenient. Policies should be based on equity and justice, and which the general public would approve.

It is not unusual for Islamic nations to have a distinct set of governing rules (i.e. Shariah), as long as the laws are based on the main sources of legislation. Islam does not rule with an iron-fist. Good Islamic governance is a process of cultivating a society according to its needs, and where needed, to gradually apply regulations in order to promote security and enhance development.

If nations had in the past been accustomed to other rules that governed them then Islam must slowly wean the nation. For example, Nigeria was ruled by the French, thus much of its constitution and regulations was influenced by French culture. Accordingly, the Nigerians adapted to it, but after independence Nigerians became faced with adapting to a new system.

Historically, Nigeria is a nation filled with rich and varying cultures, and not all embrace one faith. Today, the Shariah governs parts of Nigeria, and English law rules some, while others still adhere to tribal rule. As it stands today, Islam is acceptable to the differences but its aim is to slowly integrate the nation towards it.

Besides the necessity of gradually implementing new order, a developing Islamic state must be able to discern the consequences of the outcome before implementing any new law. If a situation poses two conflicting consequences, then a serious analytic approach must be taken, and then, the decision should side with the betterment of the outcome. However, if both consequences threaten the stability of society then abandonment is sometimes the best solution.

Prophet Mohammad himself for over twenty years had practiced the implementation of Islamic rule gradually, even though the entirety of its system was already set at the onslaught of his mission.⁵ Moreover, on many occasions Prophet Mohammad would have carried out his intended plan were it not for another issue that conflicted with his plan. Before orders went forward the Prophet would have made certain that the orders would not cause a stir amongst his nation, and if so, he would then forgo the plan. Therefore, it is not only critical to introduce the system gradually but also to avoid policies that could result in chaos—stability of society is precedent.

In order to resolve a debilitating nation, good Islamic governance would first tackle the major problems facing the nation. There is not a “set standard” to follow because each state has its own set of problems that may be different from other nations. Also, solutions for one nation may not be applicable for another, since each society has its own culture and views.

With that in mind, how does a nation like Nigeria repair its troubles? How does a nation that was once a large exporter of food now become the importer of food?⁶ The problem lies in the complexity of the system, and the nature of its people.

For example, one of the major issues in Nigeria is the socio-economical level of its citizens. Not that Nigeria is a poor nation; on the contrary, its oil could comfortably self-suffice itself.⁷ Nonetheless, unemployment⁸ and poverty⁹ are at

⁵ The Qur’an was first revealed to Prophet Mohammad on a single occasion and later verse-after-verse in accordance with the events of the day.

⁶ Nigeria: <http://www.eia.doe.gov/emeu/cabs/nigeria.html> (last visited June 12, 2004).

⁷ Nigeria is a petroleum-based economy, which accounts for 90-95% of export revenues, over 90% of foreign exchange earnings and nearly 80% of government revenues.

Report by the Energy Information Administration Home at <http://www.eia.doe.gov/emeu/cabs/nigeria.html> (last visited June 15, 2004).

an all time high. Thus when the socio-economical level of a nation citizen is sinking then the macro ramifications, such as squandering, corruption, and unethical social practices would become the norm. Certainly, within time the nation would become unstable and vulnerable, and ultimately collapse. Thus, a carefully diagnosed procurement becomes paramount in order for its survival.

The success of any institute (i.e. nation) lies within the people who have designed and managed it with decent expert employees, and most importantly, guarded it. The expertise of a surgeon is in the operating room not engineering oil refineries. A competent judge bases sound decisions on years of studying law and experience. An English teacher is best suited to teach English not math. Various fields require competent and experienced individuals.

Our Qur'an attests to this fact: ***"I am a good guardian and expert."***¹⁰

Professional fields require the right person to manage them that is why the prophet Joseph said ***"good guardian"***, in addition to, ***"good expert"***.

Another point that cripples institutions is nepotism and favoritism. Loyalty towards family and nation is good but loyalty towards justice is foremost.

"O ye who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both."¹¹

Allah also says: ***"And when ye judge between man and man, that ye judge with justice..."***¹²

⁸ In 1992 an estimated 28% of the population is unemployed. Nigeria, at <http://www.geographic.org/countries/Nigeria> (last visited June 15, 2004).

⁹ In 1993 an estimated 63% of the population is below the poverty line. Nigeria, at <http://www.aneke.com/facts/Niger.html> (last visited June 15, 2004).

¹⁰ Qur'an 12:55. ABDULLAH YUSEF ALI, THE MEANING OF THE HOLY QUR'AN, New ed., Amana Corporation trans. (1989).

¹¹ Qur'an 4:135. ABDULLAH YUSEF ALI, THE MEANING OF THE HOLY QUR'AN, New ed., Amana Corporation trans. (1989).

Nepotism and favoritism culminates a variety of weaknesses, it is the microbe that precipitates corruption in all governmental and secular levels. It is Pandora's¹³ box that unleashes bribery, public pervasion, and lack of oversight towards public obligations (i.e. procrastination). Nepotism and favoritism would lead to public disdain, devalue professionalism, and consequently lead a nation into unrest and its eventual downfall.

A nation is upheld by the veracity of its citizens. The cornerstone of an Islamic society is based on ethical and moral codes. Morality is one of the most powerful force shaping civilized societies. Corruption threatens the whole body of ethical and moral values. Once a person offers a bribe he or she loses a little of their own importance. The one who accepts the bribe becomes inferior. Corruption also undermines the foundation of a nation's liberty and human dignity. It has a trickling effect on a nation. It not only infiltrates governmental and civil institutions but it also strikes at the heart of society; it changes relations. Corruption fuels rancor, mutual distrust, and enmity. Warm relationship amongst the family and community would diminish. People would become self-centered, idols unto themselves.

Imam Ali has been quoted as saying: *“Four factors contribute to the downfall of governments: Abandoning the principles, adhering to arrogance, and favoring contemptible individual while disposing the praiseworthy. And when contemptible individuals or the young and inexperienced are put in charge of government affairs, it will lead to its disintegration and downfall.”*

¹² Qur'an 4:58. ABDULLAH YUSEF ALI, THE MEANING OF THE HOLY QUR'AN, New ed., Amana Corporation trans. (1989).

¹³ *Greek Mythology*. The first woman, bestowed upon humankind as a punishment for Prometheus's theft of fire. Entrusted with a box containing all the ills that could plague people, she opened it out of curiosity and thereby released all the evils of human life.

A prominent figure of the Umayyad dynasty was asked for the reason the dynasty fell from grace and government. He replied: *“They entrusted major tasks and affairs to the young and inexperienced and assigned minor tasks to prominent figures. Neither the young were competent enough to discharge their duties with respect to the tasks they were assigned, nor the prominent figures carried out their duties because of disdain and self-esteem...and between these two the government was lost.”*¹⁴

Therefore, to develop good Islamic institutions the heads of government must first be appointed by the people. Afterward the government should form diverse committees, who are honest experts, such as academicians and professionals in every field of the government and its subsidiary institutions, in conjunction with, Islamic jurists who are also knowledgeable within the fields. The committees and jurists must uphold the principles of modesty, humbleness, and not be influenced by worldly vanities. The set of Muslim jurists and advisory committees must have accessibility to supervise the actions and financial affairs of the nation, and if needed, amend institutes, set guidelines, and ultimately secure good relation with its employees and the community it serves.

Good Islamic governance should be devoted to finding, evaluating, and promoting solutions to the labor class. Qualification and work merits should be the standard of promotion and position not favoritism or nepotism.

In the fight against bribery and corruption civil officers must be paid well, so that they may not be tempted to lower their standards and misappropriate the nation’s revenue. Committees must exterminate past predecessors who have tainted governmental and civil posts. Such persons should not be confidants to

¹⁴ IMAM MOHAMMED SHIRAZI, IF ISLAM WERE TO BE ESTABLISHED (Fountian Books 2000)

any public post because they were complicit with the corruption of the nation and may do so again.

Some of the monumental tasks for the committees would be to replace immoral establishments with respectable businesses and acceptable practices. Moreover, the committees must be able to provide honorable alternatives, in addition to, rehabilitation for employees and patrons of the establishments.

For example, transforming bars into coffee houses or cafés.¹⁵ During the nation's transformation, the Islamic government must make a concerted effort to educate the public on the dangers of alcohol on the human body; in addition to, the havoc alcohol creates in society and the family.

Perhaps more challenging would be to eradicate brothel houses or private prostitution. Shutting down these businesses without providing an alternative trade or lifestyle would only force the establishment to go underground and immorality to continue. Thus, a comprehensive Shariah system must be in place, such as simultaneously providing maintenance, vocational training or higher education, rehabilitation, and ultimately an alternative profession. Additionally, good Islamic governance should facilitate the institution of marriage since marriage can be a means of physical pleasure, psychological, and economical stability.

A nation's resource belongs to its people. The wealth of the nation does not belong to its ruler, or the elite and their entourage. Despotism and royal dynasties that selfishly squander a nation's wealth are predestined to fail.

¹⁵ Bars are a means to socialize, just as coffee houses and cafés are but without its immoral consequences.

Imam Ali said: *“You should know that the people’s poverty causes the ruin of the country; and the people’s poverty is caused by the amassment of riches by rulers who are motivated by selfish desires.”*¹⁶

Islamic tradition dictates that people are the masters of their own wealth. Nonetheless, abused capitalism, monopoly and the black market are forbidden in an Islamic society because they are extremely injurious to the public. Fair and accessible market should be open to its citizens—exclusion discouraged. The ratio gap between the have and have-nots must be purged. If a nation deprives its citizens of an honorable lifestyle (i.e., food, shelter, and security) then stagnation, pandering, and decadence would result. Thus good governance must secure the financial needs of its people to the degree that they are never in need of others (i.e. nations).

Nonetheless, a nation must also take the lead of its own financial record. To note, as of 2000-01 the World Bank approved a structural adjustment loan of \$105 million to help support fiscal reforms in Nigeria.¹⁷ Even more staggering, Nigeria reported an external debt of \$1.6 billion.¹⁸ Financial independence should be high-priority for the newly established Islamic government of Nigeria.

Building trust and security is paramount between the head of state and its members. Good Islamic governance must provide its citizens—Muslims and non-Muslims—public security by defending individual and civil rights. Citizens must be free of illicit prosecution, all the more, devoid of repression or aggression by its leaders. Tolerance towards divergent opinions must prevail in a nation that is

¹⁶ IMAM ALI’S EPISTLE TO MALIK ASHTAR, Tak Printing House, reprinted 1984.

¹⁷ In 1993 an estimated 63% of the population is below the poverty line. Nigeria, at <http://www.aneke.com/facts/Niger.html> (last visited June 15, 2004).

¹⁸ Nigeria, at <http://www.aneke.com/facts/Niger.html> (last visited June 15, 2004).

home to multi-culturalism and religions, such as Nigeria. Good Islamic governance permits its citizen ample liberty to will their destiny within the context of Islamic principles.

When structuring an Islamic penal code, the aim is to deter and punish violators that have broken the law; in addition to, rehabilitating the criminal as permitted. Good governance is founded on prevention not punishment. Islam cares to prevent criminal acts before they happen in order to maintain public security.

Islamic Shariah tries to combat crime and terror actively; however, it leaves room for mercy and forgiveness. Good governance teaches its followers to learn mercy and forgiveness from their Lord.

Allah has said: ***“O’ You who believe, the law of equality in punishment is prescribed for you in case of murder, but if the killer is forgiven by the relatives of the killed against blood money, then adhering to it with fairness and payment of the blood money to the heir should be made in fairness. This is an alleviation and a mercy from your Lord.”***¹⁹

The Islamic penal code are grouped into two categories:

1. Transgressing the right of Allah (i.e. alcohol consumption or adultery).
2. Transgressing the right of an individual (i.e. murder or defamation).

¹⁹ Qur’an 2:178. Translation by SAYED MOUSTAFA AL-QAZWINI.

However, in non-Islamic environments or where the Islamic government has not fully been established (i.e. economic, social, political, etc.) the *Had*²⁰ penal code may not be exercised. In general, people cannot be accountable or prosecuted, nor found guilty if the nation itself is not functioning accordingly as prescribed (i.e. Islamic governance).

Good Islamic governance commands societies and individuals alike to promote social justice, equality, and maintain distribution of wealth. Shariah laws are dynamic, in that, they are everlasting and not bound by individualistic interests. Islamic Shariah can only be applied when society has adequately been provided with the basic necessities of life, such as food, shelter (i.e. housing, clothing, and public security), and employment. To add, Shariah punishment is only possible if society has been provided with an equal opportunity in education. Besides, making possible the institute of a functional matrimonial system. Only *then* could Islam stand firmly against any person that attempts to terrorize or jeopardize the security of society.

Islam's penal system is designed by a verse (amongst many other verses) from the Qur'an: ***"We [Allah] would never punish anyone until a messenger was sent and had given full instruction and warning."***²¹

Another point worth mentioning, when Prophet Mohammad began structuring an Islamic state in Medinah he did not fully implement the penal system, although it had already been systematically formed. Prophet Mohammad

²⁰ Punishment under Islamic law is categorized into two groups: Hadd, which is defined in the Qur'an and the traditions of the Prophet. The other is Ta'zeer, which is determined by a just judge. Ta'zeer is prescribed for offences for which no specific punishment has been prescribed in Islamic law (such as, defrauding, i.e. giving short measure), or for secondary offences such as traffic law violation.

²¹ Qur'an 17:15. Translation by SAYED MOUSTAFA AL-QAZWINI.

withheld full sentence of crimes until an Islamic system had been firmly set and began functioning properly.

To illustrate, stealing in Islam is forbidden and punishable by some degree of hand amputation. However, such a law could not be enforced if the nation failed in providing ample living conditions for its citizen. If a person lives in a society that is rampant with corruption, unemployment, and poverty, and its leaders are unmindful of its responsibility then the perpetrator would not be entirely accountable (i.e. guilty).

Another example, taking the infamous Nigerian case of Amina Lawal Kurami, the 31 year-old woman who gave birth out of wedlock and was sentenced to death by stoning, but later overturned by external pressures.²² In a country like Nigeria, who is in the process of establishing an Islamic government, has not yet reached the position of ordering such a sentence because it has yet to establish the infrastructure of the nation.

Certainly a nation cannot permit violence or violators to continue. So what does a country like Nigeria do in the meantime? Good governance would suggest that during the construction of an Islamic system the nation must detain the violators, and then a council of Muslim jurists and expert advisors would determine the form and length of the duration, and at the same time, and if applicable, provide rehabilitation.

Today, the world is witnessing another nation embracing the greatest potential for influencing civil liberty, economical, and political outcomes all

²² Islam considers adultery by a married person as a heinous crime and punishable by death if proved by four credible witnesses. The testifiers must have eye-witnessed the act and could explicit detail the event. If a person is accused by less than the required witnesses then the accusers must be flogged and never permitted to testify in future cases. By such standards adultery by a married person is one of the hardest crimes to convict.

headed by an Islamic democracy. As Nigeria begins its monumental transition towards an Islamic state its primary premise must be built on social justice and equity. In order to jump-start the nation, Nigeria must first tackle the economic hardship, unemployment, poverty and corruption gripping its nation. Good governance is catered to meet the needs and security of its people. The affairs of the nation should be placed with competent and honorable individuals represented by the people (not nepotism and favoritism), and overlooked by a collective counsel of professionals and Muslim jurists. The power to enforce laws, exact obedience, command, determine, and judge must be invested in the development of good governance. Therefore in view of a good developing state, newly suitable Shariah laws must be introduced gradually and only exercised after the nation has taken care of its weaknesses and begins to function productively. Moreover, emphasis on public and communal welfare (i.e. ending immorality, corruption and stagnation) must strongly be integrated. Good governance protects the rights and security of its citizens. Thus, every Nigerian (Muslim and non-Muslim) is entitled to liberty and fair treatment. Imam Ali said: *“People are of two categories: those who are Muslims and your brethren, and those who have religions other than yours and yet are human beings like you and your equals in creation.”*²³

²³ IMAM ALI’S EPISTLE TO MALIK ASHTAR, Tak Printing House, reprinted 1984.