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# JOURNEYING BACK TO MADINAH: A DEVELOPMENTAL HISTORY OF SHARI'AH GOVERNANCE (SG) IN ISLAMIC FINANCIAL INSTITUTIONS (IFIs) IN NIGERIA.

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## Abstract

This article examines the history of evolution and developmental progression of Shariah Governance (SG) in the global Islamic Finance Industry. It explores the status of SG in the nascent Nigerian Islamic Financial Service Industry. It asserts that as a source based Industry, SG remains the pivotal link between its original forms of Islamic Commercial transactions and their transformation to modern financial instruments. It finds that lack of SG Structure contributed to the failure of the earlier attempt at Islamic Financing in Nigeria and concludes that its continuous development is crucial to leading the industry's Muslim stakeholders to a true state of Islam in practice and observance.

## Introduction

Shari'ah is the all-encompassing code of conduct in Islam as guidance for Muslim in his daily affairs. It is the divinely ordained blueprint of human conduct that governs

and regulates faith, worship, ethics, morality and human relations concerning personal and public rights that include social, political, cultural and economic life.<sup>1</sup> Therefore, the term Shari'ah includes both law and the tenets of faith contrary to the narrow perception of Shari'ah as law alone.<sup>2</sup>

Al Qur'an says "Indeed, my prayers, my rites of sacrifices, my living and my dying are for Allah".<sup>3</sup>

Shari'ah is subjected to human interpretations with the idea of extracting the laws<sup>4</sup> from the principles provided in the Shari'ah.<sup>5</sup> Islamic law being a source based developed law, the law and Shari'ah converge together

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<sup>1</sup> Sultan, S.A.M. Islamic Banking: Trend, Development and Challenges in Bakar and Ali (eds) Essential Readings In Islamic Finance (Kuala Lumpur, CERT publications 2012) Pp.92-93.

<sup>2</sup> Nyazee, Islamic Jurisprudence (Usul al-Fiqh) Pp.17-28.

<sup>3</sup> Al Qur'an 6:162

<sup>4</sup> This include commercial and financial laws in the sources of Shari'ah.

<sup>5</sup> Sultan, S.A.M. Islamic Banking: Trend, Development and Challenges P.93.

always in the development process and cannot diverge and therefore the development of SG in commercial and financial transactions is married to the development of Shari'ah.

Islamic finance particularly, the banking sub- sector, is seen as an innovation of the modern financial system. However, Islamic finance industry being a financial system that is govern by Shari'ah, has its origin from the primary sources of Islamic law, thus it can be traced back to the very beginning of Islam.<sup>6</sup> All modern Shari'ah compliant products of Islamic Finance have their origin from the ancient commercial and financial transactions made by the prophet and his companions. These include Mudaraba, Murabahah, Musharakah, Ijarah, Salam etc.<sup>7</sup> In fact, no newly designed product would be allowed for presentation in the market except the Shariah Board of an Islamic finance institution ascertains that it does not only has a justifiable base in the sources of Islamic law but also that it does not contravene any of its provisions. The historical and developmental approaches to GS in Islamic Finance are source based. Therefore, al-Qur'an and Ahadeeth (traditions of the prophet), being primary sources of Islamic law, would constantly remain points of reference to explore and create understanding of the basic SG principles in the commercial and financial transactions.

#### Philosophy Underlying the Concept of Shari'ah Governance (SG)

The primary philosophy underlying the concept of SG in commercial and financial services both in the early period of Islamic history and in the contemporary world is rooted in the following verse of the holy Quran:<sup>8</sup> “And they were commanded not, but that they should worship Allâh, and worship none but Him Alone (abstaining from ascribing partners to Him), and perform As-Salat (the prayers) and give Zakat (obligatory charity), and that is the right religion.”<sup>9</sup>

<sup>6</sup> Abdul Rahman, Z. Contracts and the products of Islamic banking (CERT Publications, Kuala Lumpur 2012) Pp.25-26.

<sup>7</sup> Ibid.

<sup>8</sup> And other relevant verses of Al Qur'an which include; Al Qur'an 2:275-282, 4:58-59, 4:65, 83:1-6.

<sup>9</sup> Al Quran 98:5

This verse encompasses the worship of Allah in both spiritual and mundane form as it presents prayers and obligatory charity as spiritual variant of act of worship. It thus provides the basis for man's obligation to organize his affairs in accordance to the will of Allah as His vicegerent on earth.<sup>10</sup> Also, aside from the worldly gains inherent in mundane activities, performing them in compliance to the dictate of Allah attracts rewards.<sup>11</sup> Man therefore agrees to assume this great responsibility in a covenant with Allah.<sup>12</sup>

This is a matter of faith that cannot be compromised in Islam.<sup>13</sup> Pursuant to the above philosophy, several verses of the Quran and Sunnah laid down the general principles which provide guidelines for the conduct of Muslims economic affairs. Such principles include prohibition of devolution of others wealth except through mutual consent. Condemnation of fraud or deception (al-Ghish),<sup>14</sup> bribery (al-Rashwa),<sup>15</sup> uncertainty in contracts (al-Gharar)<sup>16</sup> riba (interest)<sup>17</sup> and gambling (al-Maysir)<sup>18</sup> amongst others. The primary sources of Islamic law also promote economic and financial transactions that lead to fairness among the contracting parties and general economic justice within any

<sup>10</sup> Al Qur'an 2:30

<sup>11</sup> Abdulqadir, A.I and Jaffar, Z. B. *Islamic Financial Services: The Way Forward For the Financial Regulatory Authorities*. (2006) UILJ 1:1 Pp.5-6

<sup>12</sup> Abdul Rahman, A. *An Introduction to Islamic Accounting Theory and Practice* (CERT Publications, Kuala Lumpur 2012) Pp.8-9.

<sup>13</sup> Abdulqadir, and Jaffar, *Islamic Financial Services: The Way Forward For the Financial Regulatory Authorities*. Pp.5-6

<sup>14</sup> Al Qur'an 83:1-6. The Hadith of the prophet warning against cheating reported by Imam al Bukhari; he who cheats is not of us.

<sup>15</sup> Al Qur'an 6:42, the verse was revealed against kaab bin al Ashraf and others among the Jews leaders in Madina who accept bribe. Ibn Mas'ud, Qatadah, Dahhak and a host of other Sahabah (companions of the prophet) and Tabi'un (those who come after the companions) are of the view that the word "suht" in the verse refers to bribery. See Tafseer al Bagawi on the interpretation of the verse.

<sup>16</sup> Uncertainty or speculation renders commercial and financial transactions void. This is one of the attribute of riba; the investor is assured of a predetermined rate of interest in a financial transaction. However, the nature of this world is uncertain; the results of any project are not known with certainty ex-ante. Therefore, speculation and uncertainty involved. See Taqiuddin al Hilali, M. *الإسلام اولمذاهب الاثنترالقبة* (Al Islam wal Mazahib al Ishtirakiyyah) Vol.1 P.10 accessed from al Maktabah al Shamelah <http://www.shamelah.ws>.

<sup>17</sup> Al Qur'an 2:275-282.

<sup>18</sup> Al Qur'an 5:90-91.

given society. This is the philosophy underpinning the concept of SG of IFIs.<sup>19</sup> It was narrated by Abu Hurairah that the Prophet passed by a man selling heap of eatables (corn). The prophet thrust his hand into the heap and his fingers were moistened. The prophet said what is this? The man (owner of the heap) replied; it was drenched by rainfall. The prophet said “the water could have drenched the top. He who deceives us is not part of us.”<sup>20</sup> The action of the prophet shows an institutionalization of supervision and governance in commercial activities at his time. This would be more glaring when the above cited verses of al Qur’an interpreted along this prophetic tradition.<sup>21</sup>

It was reported that Umar bin al Khattab<sup>22</sup> said “he should not make commercial and financial transactions in our market, one who does not know the rules<sup>23</sup> governing our conducts in the market.”<sup>24</sup> This is a locus classicus principle of SG in commercial and financial transactions.

The principle establishes a rule that the license to practice in finance market is acquaintance with Islamic commercial law.<sup>25</sup> This shows that knowledge of Shari’ah is the primary requirement, because without the knowledge of Shari’ah, compliance cannot be achieved. It can also be understood that the principle has barred all non-Shari’ah compliant products from being marketed in the Islamic finance industry, thus the market operations shall holistically embrace Shari’ah value system and be governed by Islamic law.

<sup>19</sup> Abdulqadir, and Jaffar, *Islamic Financial Services: The Way Forward For the Financial Regulatory Authorities*. P.150.

<sup>20</sup> Reported by Muslim hadith No. 147 Vol.1, Ibn Majah Hadith No. 2215 Vol.6.

<sup>21</sup> The prophet is the interpreter of al Qur’an. See al Qur’an 16:44 and 16:64.

<sup>22</sup> The second caliph of Islam, he was the first person that was referred to as amir al muminin (the leader of the believers). See Muhammad al Nasiri, K.A. *الاسئصا لأخبار ودل المغرب الأوصى* vol.1 (Dar al Baida Publication, 1997) P.80, accessed from Maktaba Al Shamela <http://shmelah.ws>

<sup>23</sup> Shari’ah, here means the religious and legal rules in conducting mundane transactions.

<sup>24</sup> Ibn Hiyan al Andalusi, A.M.A. *Tafsir al Bahr al Muheet* vol.4 Pp.29 and 39, accessed from Maktaba Al Shamela <http://shmelah.ws>.

<sup>25</sup> Contingent on the saying of Umar that modern Islamic finance industry makes the establishment SB which is constituted by learned Shari’ah Scholars a requirement for operating IFI. See paragraph 9.00 CBN Guidelines.

## Institutionalization of Islamic Financial Transactions in Early Islamic Era

It has been shown that principles of SG in IFIs traced back to the primary sources of Islamic law. This connotes that the Concept of SG develops based on the sources of Islamic law. However, during the time of the prophet, governance of commercial and financial transactions was not institutionalized. The practice of institutionalization was restricted to bait al mal (state treasury)<sup>26</sup> where tax, zakat and other issues relating to state financing are administered.<sup>27</sup> Commercial and financial transactions are governed by Islamic value system but were made at the individual capacities.<sup>28</sup> Chapra and Ahmed<sup>29</sup> are of the view that the system had thrived for centuries during the heyday of Islamic civilization but had become displaced by conventional system after colonization of most of Muslim countries. In their opinion Islamic finance has survived centuries but collapsed because of colonization. Akhtar<sup>30</sup> states that Islamic banking was well entrenched in the early period of Islam, the system develops out of the commercial needs and the administration of finance at that time. The financial institutions were administered in accordance with social ideals of Islam. The objective is to harmonize the conducts of people and the institutions based on the Islamic ideals of social and economic life.

Financial intermediation activities have been well entrenched since the golden age of Islamic civilization. As at the last quarter of the third century of Islamic era financiers,<sup>31</sup> who provided facilities to both public and

<sup>26</sup> Ali, E.R.A.E., Odierno, H.S.P. and Ismail, A. *Essential Guide to Takaful (Islamic Insurance)* (CERT Publications, Kuala Lumpur 2008) Pp.114-116, Al-Mallah H.Y. *The Governmental System of the Prophet Muhammad: A Comparative Study in Constitutional Law* (Dar Al-Kotob Al-Ilmiyah, Lebanon 2011) Pp.133-143.

<sup>27</sup> Ibid.

<sup>28</sup> Yusuf, S.M. *Economic Justice in Islam* (Kitab Bhavan, New Delhi 1998) Pp.81-89. Yusuf is of the view that it started during the Abbasid period.

<sup>29</sup> Chapra, and Ahmed, *Corporate Governance in Islamic Financial Institutions* P.2.

<sup>30</sup> Akhtar, W. *Economics in Islamic Law* (Kitab Bhavan, New Delhi 1992) Pp. 53-61.

<sup>31</sup> The Financiers are popularly known as Sayarifah. The singular of Sayarifah is sayrafi. See Abdulqadir, and Jaffar, *Islamic Financial*

private sectors, have been performing the basic functions of today's banks.<sup>32</sup> Interest-free Islamic financial products namely, musharakah (partnership financing), mudarabah (profit sharing financing), bay' bithaman ajil (deferred sale) and qard hasan (benevolent loan) were extensively used by Muslims and non-Muslims alike for mobilization and extension of resources. It has been asserted that the products were used to mobilize the entire reservoir of monetary resources of medieval Islamic world. They were used in financing long distance trade, agriculture, craft and manufacturing.<sup>33</sup>

During the Abbasiyah<sup>34</sup> period banking practice was carried out by Jahbadh,<sup>35</sup> a functionary who is specialized and authorized to conduct banking business and furnish detailed statements to the government.<sup>36</sup> The Jahbadh collects deposits, gives loan and other types of commercial transactions. The Jahbadh Institution is regulated by Islamic state of Abbasiya Caliphate and governed in accordance with Islamic law.<sup>37</sup>

Abdul Rahman<sup>38</sup> contends based on a hadith narrated by Imam al-Bukhari<sup>39</sup> that Islamic finance was institutionalized during the first century of Islam. Islamic compliant products that are being operated today by modern IFIs and which form their basic structure were used by the prophet and his companions.<sup>40</sup> Savings deposit received by Zubair bin al-'Awwam from many people was up to 2,200,000 dirham.<sup>41</sup> He uses the savings for investment financing and ensures its security.<sup>42</sup> The practice of Zubair

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Services: The Way Forward For the Financial Regulatory Authorities. Pp 148-149.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Particularly during the period of al-Mansur (754-775 CE) See Akhtar, Economics in Islamic Law P. 54

<sup>35</sup> Ibid.

<sup>36</sup> Ibid, Yusuf, Economic Justice in Islam (Kitab Bhavan, New Delhi 1998) Pp.81-89.

<sup>37</sup> Ibid.

<sup>38</sup> Abdul Rahman, An Introduction To Islamic Accounting Theory and Practice Pp.8-9.

<sup>39</sup> Sahih al-Bukhari, Vol.4 Book 53, Number 358.

<sup>40</sup> Abdul Rahman, Contracts and the products of Islamic Banking P.25

<sup>41</sup> Ibid.

<sup>42</sup> Siyar 'Alam an-Nubala of Imam al-Zahabi, vol.1 P.66, from Electronic copy of al-Maktabah al-Shamelah <http://shmelah.ws>, see also Abdul Rahman, Contracts and the products of Islamic Banking P.26.

of the core services of modern Islamic finance industry. Therefore, he<sup>43</sup> strongly argues that IFIs of today traced their origin to the ancient financial instruments that survives centuries of Islamic civilization.

It is not in dispute that IFIs trace their root to the early centuries of Islamic civilization but the contention is the period when the industry was institutionalized and operated within the parameters of Islamic state of both public and private financing. Albeit, it was not in dispute from the time of hijrah (migration to madinah) public financing, such as zakah, tax, etc. were administered by the public treasury known as bait al maal.<sup>44</sup>

### Resurgence of Shari'ah Governance in Modern Finance Industry

The Islamic financial system which had worked effectively for centuries during the period of Muslim civilization was displaced by the conventional system as a

result of colonization of most Muslim countries.<sup>45</sup> The breaking out of snail-shell of Islamic banking, finance and economic system can be attributed to the spirit of freedom and liberty from colonial servitude and exploitation.<sup>46</sup>

Colonization by the West was the primary cause of displacement of Islamic financial system. This was complemented by the conventional ribawi (interest base) system that was practice by the colonial administration and even after. The conventional system, which hitherto, was the singular medium of financial transactions without competitor, nurtures and survives on interest; it hatches uncertainty and multiplies speculation, all for profit. The system was blamed for incessant economic turmoil in the

<sup>43</sup> Ibid.

<sup>44</sup> Al-Mallah The Governmental System of the Prophet Muhammad: A Comparative Study in Constitutional Law Pp.133-143.

<sup>45</sup> Chapra, and Ahmed, Corporate Governance in Islamic Financial Institutions P.2.

<sup>46</sup> Orisankoko, A.S. Socio-Economic and Legal Challenges of Shari'ah- Compliant Banking Operation, its Developmental Impacts and the Struggles of the Believers: Epistemological Lessons from Nigeria Journal of Islamic Economics, Banking and Finance, (2012) Vol. 8 46 No. 2, Pp.45-46.



past and the ongoing financial crisis in the Western European countries.<sup>47</sup>

About four decades before the recent global economic meltdown, Islamic financial services have been developing as a viable alternative intermediation platform.<sup>48</sup>

The divergence of the Conventional Financial Institutions (CFIs) with the requisite shari'ah governance framework facilitated the resurgence of the present IFIs.<sup>49</sup> In a way, its re-emergence followed a well-established Islamic tradition of *tajdid* (Islamic Revivalism).<sup>50</sup> Muslims around the globe are becoming increasingly aware of their obligation to conduct their economic and financial transactions in line with the Shari'ah.<sup>51</sup> Islam is re-establishing its presence and its relevance on more solid grounds, meaning that more Muslims are seeking to abide by the rules and guiding principles of the Shari'ah, particularly in their financial dealings.<sup>52</sup>

As a result of resolution (Fatwa)<sup>53</sup> of the Council of the Islamic Fiqh Academy (OIC) held in Jeddah in respect of SG in Modern Islamic finance, many Shari'ah compliant finance companies were established.<sup>54</sup> The fatwa makes Shari'ah compliant finance to gain market share at the

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<sup>47</sup> Aliyu, S.U.R. Islamic banking and finance in Nigeria: issues, challenges and opportunities <http://mpira.uni-muenchen.de/42573/> accessed on 8<sup>th</sup> May, 2013 Pp.1-2.

<sup>48</sup> Abdulqadir, A.I. Integration of Islamic Financial Services: A Tug of Viability, Legality And Politics  
Journal of Islamic Economics, Banking and Finance, (2012) Vol. 8 No. 72 1, Pp. 71-72

<sup>49</sup> Global Islamic Finance Report (GIFR) "Discovering the Root of Conventional and Islamic Finance" in Humayon Dar and Azami (eds.) Global Islamic Finance Report (ABM Islamic publication, London 2010) P.148

<sup>50</sup> Abdulqadir, A.I. Integration of Islamic Financial Services: A Tug of Viability, Legality And Politics Pp. 71-72

<sup>51</sup> Global Islamic Finance Report (GIFR) "Shari'ah Governance in Islamic Finance" in Humayon Dar and Azami (eds.) Global Islamic Finance Report, p.182,

<sup>52</sup> Hassan, M.K. and Kayed, R.N. The Global Financial Crisis, Risk Management and Social Justice in Islamic Finance (2009) ISRA International Journal of Islamic Finance Vol. 1 Issue 1

<sup>53</sup> In middle and late 1980s many fatawa (Resolutions) were issued in respect of Islamic finance, Particularly, resolutions Nos.9/2, 10/2, 12/2, 28 (3/4), 21 (9/3), 22 (10/3) etc.

<sup>54</sup> Global Islamic Finance Report (GIFR) Takaful and Retakaful (BMM Islamic Publications, London 2010) P.156.

conventional finance. This prompted some financial experts to make the following observation:

The spectacular acceptance and demand for Islamic finance means that within the next decade, the industry is likely to capture half the savings of the 1.6 billion-strong Muslim world. It is tempting to assume that the growth is being fuelled by an older generation of Muslims keen to take advantage of an offering that complies with their traditional way of life. Not so: the vast majority of the uptake comes from the under-30 segment of Islamic world, and it is this segment that holds the key to success for the more than 250 Islamic banks that now operate in more than 75 countries worldwide. The popularity of Islamic finance among these young Muslims is a response to a resurgence of interest in their cultural and religious identity.<sup>55</sup>

An overriding consequence of acceptance of faith in Islam is that everything a Muslim does must be in accordance with the wishes of Allah as disclosed in the sources of Shari'ah.<sup>56</sup> The worldview of Islam encompasses both the worldly aspect<sup>57</sup> and the religious aspect, both of which must profoundly come together in an inseparable way.

The religious aspect has ultimate and final significance. Everything in Islam is ultimately focused on religion. This does not imply that an attitude of neglect should be ascribed to worldly aspect than religious because they are inseparable. Al-Qur'an says "say, indeed, my prayers, my rites of sacrifice, my living and my dying are for Allah."<sup>58</sup>

The philosophy governing financial transactions in accordance with Shari'ah is to have *falah* (success) in this life and hereafter which is a quality towards achieving the pleasure of God.<sup>59</sup> Having this in mind, a Muslim is under obligation to conduct all his affairs in line with the Shari'ah in order to have *falah* in Allah. Therefore, the route to resurgence of Shari'ah governance in financial institutions was opened as a consequence of Muslims liberty and freedom from the

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<sup>55</sup> The Banker in association with the Cambridge Consultancy Maris Strategies published in a UK based Financial Journal published by the Financial Times Limited in Nisar, S. and Ayub Khan, M. *Islamic Banking, Finance and Capital Market* (Tasis, Mumbai 2013) p. 2

<sup>56</sup> Abdul Rahman, *An Introduction to Islamic Accounting Theory and Practice* Pp.8-9.

<sup>57</sup> The worldly aspect includes economic and financial transaction.

<sup>58</sup> Al-Qur'an 6:162

<sup>59</sup> Abdul Rahman, *An Introduction to Islamic Accounting Theory and Practice* Pp.8-9.

exploitation of the West via the tool of colonization. The Muslims have realized the need to embark on a journey back to Madinah of the holy Prophet (saw) and to govern their affairs particularly, the financial transactions in Shari'ah compliant manner.

#### Development of Shari'ah Governance (SG) in Modern IFIs

Undoubtedly, one of the biggest challenges of IFIs is developing a framework for governing, supervising, and regulating them. There is no common approach among countries where Islamic banking and finance exists.<sup>60</sup> One of the two main views—held by regulators in Malaysia and Yemen,<sup>61</sup> for example, is that Islamic banks should be subject to a supervisory and regulatory regime of central banks that is entirely different from that of conventional banks. The second main view recognizes the uniqueness of Islamic banks' activities, but favors putting them under the same central bank supervision and regulatory regime as that for conventional banks, with slight modifications and special guidelines that are usually formalized in occasional central bank circulars and regulations.<sup>62</sup> Bahrain, Malaysia, Qatar and Nigeria are some of the countries that practice this latter form of central bank supervision and regulation.<sup>63</sup>

Since the late 1990s, the Islamic banking and finance world has stepped up efforts to harmonize SG framework by standardizing the regulatory and supervisory guidelines.<sup>64</sup> The Islamic Development Bank (IDB)<sup>65</sup> is

<sup>60</sup> Section 6 of introduction to IFSB-10 P.4

<sup>61</sup> El qorchi, M. Islamic Finance Gears Up Finance & Development (2005) Vol. 42, No. 4 Pp.1-2.

<sup>62</sup> The second model is the structure adopted by the Nigerian regulatory bodies CBN, NAICOM, NDIC and SEC which primarily regulate the conventional financial institutions. They simultaneously regulate and supervise IFIs under different framework. See CBN Guidelines For the Regulation and Supervision of Institutions Offering Non-Interest Financial Services In Nigeria 2011, NAICOM Operational Guidelines for Takaful Operators 2013.

<sup>63</sup> El qorchi, M. Islamic Finance Gears Up Pp.1-2.

<sup>64</sup> Ibid.

<sup>65</sup> IDB is an international financial institution promoted and established by OIC member countries in 1975. The objectives behind its establishment include fostering economic development and social progress of member countries in accordance with Shari'ah principles, mobilising financial resources through Shari'ah compliant modes. IDB assist member countries and non-member countries in education, health

in developing internationally acceptable standards and procedures and strengthening the sector's architecture in different countries. Several other international institutions are working to set Shari'ah-compliant standards and harmonize them across countries. These include the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI),<sup>66</sup> the Islamic Finance Services Board (IFSB),<sup>67</sup> the International Islamic Financial Market (IIFM),<sup>68</sup> the Liquidity Management Center, and the International Islamic Rating Agency (IIRA)<sup>69</sup>. A number of countries and institutions have adopted accounting standards developed by the AAOIFI, which complement the International Financial Reporting Standards. The IFSB aims to promote the development of a prudent and transparent Islamic financial services industry and provide guidance on SG by making effective

and research. It has sponsored and published lots of research in Islamic finance. Present membership of IDB consists of 57 countries. Islamic Research and Training Institute (IRTI) is a research arm of IDB. See Nisar, and Ayub Khan, *Islamic Banking, Finance and Capital Market* Pp. 79-80.

<sup>66</sup> AAOIFI is an international financial institution which is based in Bahrain. It was established in 1991. Its primary responsibility among other things includes preparing accounting, auditing, governance, ethics and Shari'ah standards for IFIs. AAOIFI offers professional qualification programmes: certified Islamic Professional Accounting (CIPA), Certified Shari'ah Advisor and Auditor (CSAA) etc. See Nisar, and Ayub Khan, *Islamic Banking, Finance and Capital Market* Pp. 80-81

<sup>67</sup> IFSB established in 2002 and started operation in 2003. It is based in Malaysia. IFSB is an international standard setting institution for regulatory and supervisory Shari'ah compliant issues. It promotes the development of a prudent Islamic financial services industry through introduction of new standards or adapting existing international standards consistent with Shari'ah principles and recommends them for adoption.

IFSB complements the efforts of international conventional institutions such as Basel Committee on Banking Supervision, etc. Nisar, and Ayub Khan, *Islamic Banking, Finance and Capital Market* Pp. 81-82.

<sup>68</sup> IIFM founded in 2001 with a collective efforts of Central Bank of Bahrain, Indonesia, Sudan, Luban Financial Services Authority Malaysia, Ministry of Finance Brunei and IDB. The primary objectives of IIFM include enhancing cooperation among regulatory authorities of IFIs. Nisar, and Ayub Khan, *Islamic Banking, Finance and Capital Market* P. 81.

<sup>69</sup> IIRA carries on business of rating, evaluating and appraising institutions and instruments within the Islamic financial arena. It started operations in 2005, Nisar, and Ayub Khan, *Islamic Banking, Finance and Capital Market* P. 81.

supervisory and regulatory rules for institutions offering Islamic financial products.<sup>70</sup>

The IFSB has issued many standards touching on various issues on governance of IFIs. Guiding Principles on SG Systems for Institutions offering Islamic Financial Services<sup>71</sup> is considered the most focused guiding principles that deal directly with the SG standards. These international standards will assist supervisors and regulators in pursuing soundness, stability, and integrity in the world of Islamic finance.

Previously, the core markets that have extensively dominated Islamic banking and finance space are the Middle East,<sup>72</sup> Southeast Asia<sup>73</sup> and some African countries.<sup>74</sup> In recent years however, there has been an increased expansion of IFIs in Europe and America, such as UK, France, Germany and USA.<sup>75</sup> Islamic finance has attracted immense attention from international conventional regulatory and standard setting institutions such as IMF and World Bank.<sup>76</sup> Such institutions have taken keen interest in understanding the concept of Shari'ah compliant finance and participating in developing standards for its proper regulation and growth.<sup>77</sup>

#### Origin and Development of Shari'ah Governance (SG) in Commercial and Financial Transactions in Nigeria

Following the 1804 Sheikh Usman Dan Fodiyo's Jihad and the consequent establishment of Sokoto Caliphate, the hitherto war-torn Hausa states constituting the present northern Nigeria and beyond were brought under an Islamic way of life and system of government.<sup>78</sup> The

<sup>70</sup> El qorchi, *Islamic Finance Gears Up* Pp.1-2.

<sup>71</sup> IFSB-10: Guiding Principles on Shari'ah Governance Systems for Institutions offering Islamic Financial Services, 2009.

<sup>72</sup> Most importantly the oil-exporting Gulf countries.

<sup>73</sup> Malaysia is the hub of Islamic finance in Southeast Asia. However, recently there has been expansion of IFIs in Japan, China and Singapore, see Nasir, S. and Ayub Khan, M. *Islamic Banking, Finance and Capital Market* (Tasis, Mumbai 2013) Pp. 1-8.

<sup>74</sup> Sudan and Egypt.

<sup>75</sup> Nisar, and Ayub Khan, *Islamic Banking, Finance and Capital Market* Pp. 1-8.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> Abdulqadir, I.A. *Constitutionality of Islamic Banking in Nigeria* in (ed) *Contemporary Issues in Islamic Jurisprudence* A book published in

the Caliphate, which includes financial system, was governed in accordance with Shari'ah.<sup>79</sup> The system, popularly referred to a Sokoto Caliphate, lasted for a century, 1804-1903.<sup>80</sup>

In the pre-colonial Nigeria, especially within the caliphate,<sup>81</sup> all the economic and financial activities were monitored by the Caliphate with the objectives of conducting the activities within the spirit of SG.<sup>82</sup> The financial activities within the Caliphate include; generation of business capitals, Practice of money lending, Credit facility given in form of goods being sold by traders who paid the principal sum with a mark-up or share of profit, only after sale. Pooling resources together by Individuals bound by common interest to form partnership at a predetermined share of profit or loss. All these activities were practiced under Shari'ah compliant and a strict ribā- free policy of the Caliphate.<sup>83</sup> Some writers<sup>84</sup> are of the view that of the various activities relating to those offered by banks carried out in the caliphate only that of bait al-māl (Islamic treasury) was institutional. It has however been found that in addition to the functions of baitul mal, the institution called Hisbah<sup>85</sup> was also in existence in the Caliphate and performed

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honour of the Chief Justice of Nigeria Honourable Justice Idris Legbo Kutigi (Rawel Fortune Resources, Benin 2009) Pp. 94-114.

<sup>79</sup> Fulani in Al Mausū'atu al Arabiyya al Alamiyya, Pp.1-3 from Electronic copy of al-Maktabah al-Shamalah <http://shmelah.ws>.

<sup>80</sup> Abdulqadir, Constitutionality of Islamic Banking in Nigeria Pp. 94-114, Majalla al Bayan part 123 P.98 from Electronic copy of al- Maktabah al-Shamalah <http://shmelah.ws>.

<sup>81</sup> Kanem-Borno which is in the north-eastern Nigeria was a government established based on Islamic value system and economic system before colonization.

<sup>82</sup> Fulani in Al Mausū'atu al Arabiyya al Alamiyya, Pp.1-3, Abdulqadir, Constitutionality of Islamic Banking in Nigeria Pp. 94-114,

<sup>83</sup> Ibid.

<sup>84</sup> Ibid, Anderson, J. D. N., Islamic Law in Africa, (London: Frank Cass, 1955), p. 216.

<sup>85</sup> An institution established by the Caliph for inviting to all that is good, enjoining what is right and forbidding what is wrong, Al Qur'an 3:104, 3:110, See Dan Fodio, A. Diya Ahl al Ihtisab (Iqra Publications, Kaduna 1423 AH) Pp.6-23.

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Journeying Back to Madinah financial/commercial regulatory functions.<sup>86</sup>

Muhtasib<sup>87</sup> was appointed by the Caliph to monitor and checkmate the commercial and financial activities within the Caliphate to guard the system against deviation from the spirit of Shari'ah.<sup>88</sup> The functions of Hisbah may be akin to that of SB in modern IFIs, although, the activities of SB are limited to IFIs' Shari'ah compliance.

Although, the evidence of how the bait al-māl was run in the caliphate was extant in the area of collection and distribution of zakāh and other taxes which in itself is an act of financial intermediation, yet it was confirmed that the institution was not only existent but was also properly administered.<sup>89</sup> Bait al-Mal being the centerpiece of the state economic activities, which are aimed at achieving the goal of Shari'ah, its governance was based on the law governing the affairs of the caliphate, which was Islamic law. The governance principles of bait al-māl include review and audit of its activities in accordance with Shari'ah.<sup>90</sup>

The fact that the status of shakhsiyyah 'itibāriyyah (juristic artificial personality) accorded bait al-māl is gaining wide acceptance among the contemporary scholars lend credence to this proposition. The status makes bait al-māl an entity with perpetual succession, right to own property, to sue and be sued, responsibility to discharge obligations and powers to lend and borrow money.<sup>91</sup> This, coupled with the trend of development in the caliphate, make it safe to suggest that it would have performed

<sup>86</sup> Majalla al Bayan part 177 P.92 from Electronic copy of al-Maktabah al-Shamelah <http://shmelah.ws>., Al Sulaiman, M.S.M. Ahkam al Ta'amul fi al Aswaq al Maliyyah al Mu'asirah Vol.1 (Kunuz al Nabiliyah, Riyadh 2005) Pp.15-40.

<sup>87</sup> Muhtasib is the guardian or operator of the institution of Hisbah.

<sup>88</sup> Majalla al Bayan part 177 P.92 from Electronic copy of al-Maktabah al-Shamelah <http://shmelah.ws>., Al Sulaiman, M.S.M. Ahkam al Ta'amul fi al Aswaq al Maliyyah al Mu'asirah Vol.1 (Kunuz al Nabiliyah, Riyadh 2005) Pp.15-40.

<sup>89</sup> Abdulqadir, Constitutionality of Islamic Banking in Nigeria Pp. 94-114, Fulani in Al Maus'u'atu al Arabiya al Alamiya, pp.1-3, Majalla al Tareekh al Araby part 1, pp.109, 10768. from Electronic copy of al-Maktabah al-Shamelah <http://shmelah.ws>.

<sup>90</sup> Ali, Odierno, and Ismail, Essential Guide to Takaful (Islamic Insurance) Pp.114-115,

<sup>91</sup> Abdulqadir, Constitutionality of Islamic Banking in Nigeria Pp. 97-114.

regulatory functions of the contemporary central banks.<sup>92</sup>

When the colonialists eventually took over what was left of the caliphate,<sup>93</sup> between 1903 and the nation's independence in 1960, virtually all the elements of Islam entrenched in the system had been uprooted or transformed.

Fortunately, what the colonialists were able to transform was the governance structure, which include; official, legal

and, by necessary extension, political and economic systems. The economic system of the caliphate that was

based on SG was transformed to ribawi system (interest base) of western capitalist ideology. Issues relating to Islam and Shari'ah became unofficial. However, the unofficial

ones that the Muslims learn imbibe and apply to themselves on a daily basis at home and in the market place, remained

in the books, committed to their hearts and continued to prick their conscience.<sup>94</sup> This is in line with the prophetic tradition that when one does not have authority to stop an illegality, he should reject it, at least, in his heart.<sup>95</sup>

#### Shari'ah Governance in IfIs of Post-Colonial Nigeria

At the attainment of independence in 1960 the nation's economy has remained tied to the apron string of the colonialists through interest based system. This was

constant in the activities of the conventional financial institutions since the colonial time to date; it is no other than the charges and payment of interest by both the central and the commercial banks on all deposits and loans. In fact, before 1991,<sup>96</sup> it was not permissible to operate banking business in Nigeria without taking or charging interest.<sup>97</sup>

The conventional financial system enjoyed monopoly status even after independence.<sup>98</sup>

Nigerian Muslims are taking up the challenges of liberating themselves from the shackles of the western

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<sup>92</sup> Ibid.

<sup>93</sup> And kanem-borno empire.

<sup>94</sup> Abdulqadir, Constitutionality of Islamic Banking in Nigeria P. 96

<sup>95</sup> Narrated by Ibn Majah, Hadith No 4003 on the authority of Abu Sa'id, Muslim Hadith No 70, Ahmad Hadith No 10651.

<sup>96</sup> That was before the promulgation of Banks and Other Financial Institutions (BOFI) Decree, now Act, Chapter B3 LFN 2004.

<sup>97</sup> This was as a result of promulgation of the Banking Act, 1969; Nigeria has been experiencing only interest-based economic system until 1991.

<sup>98</sup> Abdulqadir, Constitutionality of Islamic Banking in Nigeria P. 96



socio-economic, political and ideological enslavement. Several efforts are being made to ensure recognition by virtually all the past and the present Nigerian Constitutions of full application of Shari'ah, not only in their spiritual life but in their entire mundane transactions.<sup>99</sup>

A writer<sup>100</sup> is of the view that before independence, there was no single financial institution that is Shari'ah compliant much as the indigenous promoters strove at pervading the country with the colonials' conventional interest banks and financial institutions that monopolized the industry except for the defunct West African Pilgrimage Agency (WAPA), which came into operation during the colonial era purposefully to make provision for Muslim pilgrims' financial arrangement.<sup>101</sup> This institution is still a household name in Kano. As at the time, being the only one of its kind, WAPA performed the functions of an Islamic financial institutional model, similar to the Tabung Hajj of Malaysia that formed the basis of the modeling Malaysian Islamic compliant financial industry.<sup>102</sup> Albeit, history shows that there was no licensed financial institution that is fully governed by Shari'ah during the colonial era,<sup>103</sup> however, the financial intermediation carried out by WAPA at that time is no less than some activities of the present financial institutions. After the nation's independence, a financial institution, Muslim West Africa Bank Ltd was established<sup>104</sup> to commence business based on Shari'ah principles of Islamic finance.<sup>105</sup> It operates fully as an Islamic financial institution governed by Shari'ah. The possibility of its operation as an institution governed by principles of Islamic economy might have been facilitated

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<sup>99</sup> Ibid.

<sup>100</sup> Ibid, Orisankoko, Socio-Economic and Legal Challenges of Shari'ah- Compliant Banking Operation, its Developmental Impacts and the Struggles of the Believers: Epistemological Lessons from Nigeria P 50.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

<sup>103</sup> After the takeover of Sokoto Caliphate and Kanem-Borno by the colonialists.

<sup>104</sup> Muslim West Africa Bank Ltd. commenced operation about 1963, see Orisankoko, Socio-Economic and Legal Challenges of Shari'ah- Compliant Banking Operation, its Developmental Impacts and the Struggles of the Believers: Epistemological Lessons from Nigeria Pp. 50-51.

<sup>105</sup> Ibid.

Banking Ordinance, 1952 and CBN Ordinance and Banking Acts, 1958, which largely gave the nationalists the opportunity to set up banks in Nigeria.<sup>106</sup>

But the nascent institution suffered ill luck, as it was ordered to stop operation by the then Federal Commissioner of finance<sup>107</sup> after the promulgation of the Banking Act, 1969,<sup>108</sup> though it was not formally and categorically licensed to operate based on Islamic financial system. This

might be the reason behind the order of the Minister to stop operation.<sup>109</sup>

A writer<sup>110</sup> is of the view that there is no documented evidence that similar effort to establish Shari'ah compliant financial institution had taken place throughout the 1970s.<sup>111</sup> However, some Authors<sup>112</sup> are of the contrary view. They argued that Muslims have

consistently taken up the challenges of liberating themselves from the western socio-economic, political and ideological enslavement. This was evident by several efforts

that are being made to ensure recognition by virtually all the past and the present Nigerian Constitutions of full

application of Shari'ah, in their spiritual and economic life.<sup>113</sup> Therefore, the argument that there was no effort towards the establishment of Islamic financial system throughout 1970s is appears to have been displaced; this is because the struggle towards the establishment of a complete system of Shari'ah cannot be divorced from struggle for economic independence from the western

<sup>106</sup> Ibid.

<sup>107</sup> Obafemi Awolowo. See orisankoko, Ibid.

<sup>108</sup> The Banking Act 1969 only allows the operation of conventional interest base financial system.

<sup>109</sup> Orisankoko, Socio-Economic and Legal Challenges of Shari'ah- Compliant Banking Operation, its Developmental Impacts and the Struggles of the Believers: Epistemological Lessons from Nigeria Pp. 50-51.

<sup>110</sup> Dogarawa, A.B. The Historical Development of Islamic Banking and the Nigerian Experience in Karwai, Habib and Jibril (eds) Islamic Economics: A Book of Readings (International Institute of Islamic Thought (IIIT) Nigeria Office, Kano 2012) Pp.129-134.

<sup>111</sup> Ibid.

<sup>112</sup> Abdulqadir, Constitutionality of Islamic Banking in Nigeria P. 96, Yadudu, A.H. Dialogue of the Deaf: The Shari'ah Debate in Nigeria in Oseni (ed) A Digest on Islamic Law and Jurisprudence in Nigeria: Essays in Honour of Hon. Justice Umaru Faruk Abdullahi (PCA) President Court of Appeal, Abuja (NAMLAS, Abuja 2003) Pp.4-5.

<sup>113</sup> Ibid.

conventional ribawi system that is contrary to Shari'ah.

This led Abikan<sup>114</sup> to state;

For a long time after the Nigeria independence, demand for the establishment of Islamic Banking and Finance system was not separated from the general demand for full application of Islamic law. The demand had hitherto focused on the duality of the judicial system to bear a true representation of Islamic law. Abikan<sup>115</sup> further states;

The unofficial ones that the Muslims learn imbibe and apply to themselves on a daily basis at home and in the market place, remained in the books, committed to their hearts and continued to prick their conscience. This is, most probably, the explanation for the incessant and increasing agitation of Nigerian Muslims for 'real' independence to apply full Islamic law in their affairs.<sup>116</sup> This however, according to some writers,<sup>117</sup>

corrects the misconception that Jaiz International Bank Plc was the premier Islamic financial institution that operated

fully in strict compliance with Shari'ah principles. That

notwithstanding, because it was the first full-fledged Islamic bank that was officially licensed to commence operation in Nigeria, it suffices to attribute to it as the first licensed but definitely not the first Shari'ah-compliant bank.<sup>118</sup>

Some conferences and seminars were organized by university based Islamic centers and various Islamic groups in late 1980s<sup>119</sup> to create awareness among Nigerians, particularly Muslims on the need to liberate themselves from the western capitalist interest based system and adopt Shari'ah compliant system along-side conventional system. Such forum has tried in convincing government to see reason why Nigerians, particularly Muslims should be given the opportunity to govern their financial activities in accordance with Shari'ah through the provision of enabling

<sup>114</sup> Abdulqadir, I.A. Interest-Free Window of the Defunct Habib Nigeria Bank: A Test-Run for Islamic Banking System in Nigeria Available at <http://Abdulqadirhabibbankpaper.com> accessed on 25<sup>th</sup> June, 2013 p.141.

<sup>115</sup> Abdulqadir, Constitutionality of Islamic Banking in Nigeria P. 96

<sup>116</sup> Ibid.

<sup>117</sup> Orisankoko, Socio-Economic and Legal Challenges of Shari'ah- Compliant Banking Operation, its Developmental Impacts and the Struggles of the Believers: Epistemological Lessons from Nigeria Pp. 50-51.

<sup>118</sup> Ibid.

<sup>119</sup> Dogarawa, A.B. The Historical Development of Islamic Banking and the Nigerian Experience P.130.

supervisory framework. This resulted into making certain publications on Islamic finance for public consumption.<sup>120</sup> This and other efforts demonstrated by Muslims make Government to issue the Decree<sup>121</sup> in 1991, in addition to the objective of promoting financial liberalization and deregulation under government control.<sup>122</sup> This was regarded as the first singular effort by government to recognize and facilitate the re-emergence of Islamic financial system in Nigeria.<sup>123</sup>

Banks and Other Financial Institutions Act (BOFIA) and the Resurgence of SG in the Nigeria Finance Industry  
Nigeria was operating interest-based economic and financial system until 1991, following the federal government policy, which promoted liberalization and deregulation in finance industry as a result of BOFI Decree, 1991.<sup>124</sup> The liberalization and deregulatory objective of the Decree allows the operation of profit and lost sharing (PLS) financial institutions in the country, specifically as a category of banking institution.<sup>125</sup> The PLS model provided for by the Decree was aimed at incorporating Islamic model into the nation's conventional interest based financial system. This step according to some authors<sup>126</sup> was aimed

<sup>120</sup> Ibid.

<sup>121</sup> Bank and Other Financial Institutions (BOFI) Decree

<sup>122</sup> Abdulqadir, Constitutionality of Islamic Banking in Nigeria P. 100, Orisankoko, Socio-Economic and Legal Challenges of Shari'ah-Compliant Banking Operation, its Developmental Impacts and the Struggles of the Believers: Epistemological Lessons from Nigeria Pp.51.

<sup>123</sup> Dogarawa, A.B. The Historical Development of Islamic Banking and the Nigerian Experience P.130.

<sup>124</sup> Now BOFI Act, as amended, was enacted in support of Decree No. 24 of CBN as amended, which is now CBN Act CAP C4 LFN 2004. The thrust of their promulgation was to bring the new banks and other Financial Institutions emerging as a result of 1987 financial liberalization and deregulation under control. The two Decrees were amended in 1997

to remove the limited autonomy granted to the CBN by the 1991 Decrees. See Abdulqadir, Constitutionality of Islamic Banking in Nigeria P. 100,

<sup>125</sup> Orisankoko, Socio-Economic and Legal Challenges of Shari'ah-Compliant Banking Operation, its Developmental Impacts and the Struggles of the Believers: Epistemological Lessons from Nigeria Pp.51.

<sup>126</sup> Ibid. To entrench the mass yarning for SG structure, at the grass root, some tertiary institutions in Nigeria (especially in the North and

at meeting the need of the teaming Muslim population that yarned for Islamic compliant financial institutions for decades. It was argued by a writer<sup>127</sup> that BOFI Decree was the first effort by government in meeting the need of Nigerians to establish Shari'ah compliant financial institutions since colonization.

Some provisions of BOFI Decree that allow the operation of PLS model are precious for consideration; section 23 (1)<sup>128</sup> provides

Every bank shall display at its offices its lending and deposit interest rates and shall render to the Bank information on such rates as may be specified from time to time by the Bank: Provided that the provisions of this subsection shall not apply to profit and loss sharing banks.

The above provision makes it a requirement that every conventional financial institution that operates

banking business has to display its interest rate as specified by the CBN. The Act<sup>129</sup> makes it a criminal offence punishable with fine for breach of the aforementioned provision. However, the proviso exempted PLS institutions from the application of this provision. It is also observed

from the said provisions that the conventional predetermined interest as periodically specified by the CBN shall not apply to PLS financial institutions and therefore they shall be guided by a different principle of finance which is known as PLS. It is thus inferable from the above provision that mentioning of PLS financing principle is a reference to Islamic financial system.

PLS is the principle that governs Islamic financing.<sup>130</sup> The concept dictates that any profit earned or loss occasioned on money is the reward/result of the business activities to which the money is put to use. Thus, IFIs are expected to take genuine business risk in their financial intermediation. Islam governs financial transactions based on PLS financing as a more equitable means of wealth creation and distribution and to enhance

Southwest regions) practiced campus Shari'ah-compliant financing. Ibid.

<sup>127</sup> Dogarawa, A.B. The Historical Development of Islamic Banking and the Nigerian Experience P.130.

<sup>128</sup> BOFIA CAP B3 LFN 2004.

<sup>129</sup> See section 23 (2) Ibid.

<sup>130</sup> Hassan, M.K. and Kayed, R.M. The Global Financial Crisis, Risk Management and Social Justice in Islamic Finance ISRA International Journal of Islamic Finance (2009) Vol. 1 Issue 1 p.35

and expedite economic maturity. The ultimate aim is to realize socio-economic justice, which is a condition for achieving prosperity in this worldly life and in the hereafter.<sup>131</sup>

Section 43 (1) (a)<sup>132</sup> provides;

Except with the written consent of the governor-

No bank shall as from the commencement of this Act, be registered or incorporated with a name which includes the words “Central”, “Federal”, “Federation”, “National”, “Nigeria”, “Reserve”, “State”, “Christian”, “Islamic”, “Moslem”, “Quoranic” or “Biblical”.

This provision empowers the governor to reserve power of registering financial institution as Islamic.

Therefore, the Act allows labeling a financial institution as

Islamic subject to the governor’s consent. However, Shari’ah compliance of IFI does not end with the name of

the institution, its products or its general permissibility. It is about probing into the modus of operating them.<sup>133</sup>

Compliance is ascertained by examining the terms and conditions by which the institution and its customers agreed to be bound vis-à-vis the conformity of those terms, conditions and their final application with the rules and principles of Islamic law.<sup>134</sup>

Whereas, section 23 of the Act<sup>135</sup> recognizes and lays a foundation for Islamic finance principles which is

PLS, section 43<sup>136</sup> allows the use of the word “Islamic” subject to the governor’s consent. It can be argued that the combined reading of the two provisions of the Act open a way for the re-emergence of IFIs.

Given the background of this development, banks, bank promoters and financial institutions applied for operational license<sup>137</sup> but many were not granted because

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<sup>131</sup> Ibid.

<sup>132</sup> BOFIA CAP B3, LFN 2004.

<sup>133</sup> The case of Beximco Pharmaceuticals Ltd and 4 Others v. Shamil Bank of Bahrain EC [2004] EWCA Civ 19 have shown how IFIs can abuse Islamic compliance by retaining its Islamic name alone while engaging in interest based transactions. See Abdulqadir, and Jaffar,

Islamic Financial Services: The Way Forward For the Financial Regulatory Authorities pp. 160-164

<sup>134</sup> Ibid.

<sup>135</sup> BOFIA

<sup>136</sup> Ibid.

<sup>137</sup> This includes United Bank for Africa (UBA), HBN, Al-Qaeda Islamic Bank, Al Barka Bank. Although, Albarka bank was granted licence by the CBN to operate as Islamic Microfinance Bank. See Orisankoko,

they did not meet the regulators requirements.<sup>138</sup> The defunct Habib Nigeria Bank Limited (HNB)<sup>139</sup> became popular among the Nigerian bank stakeholders, especially the Muslims, because it was the first Nigerian bank to take advantage of the Islamic banking enabling law<sup>140</sup> by obtaining provisional license in 1992 to operate PLS banking.<sup>141</sup> However, it could not secure final approval for the full fledged banking system. It was only granted approval by the Central Bank to operate interest-free banking window in 1997. HNB eventually opened its interest-free banking window in October, 1998.<sup>142</sup> Its main object was to promote and develop the application of divine principles, laws and traditions to the banking transactions and related business affairs. Though away from reality and standard, the Non- interest banking window of Bank PHB was for classified group of clients, as specifically declared; “This product is designed for Muslim faithful desiring banking services without compromising their religious beliefs”.<sup>143</sup>

Socio-Economic and Legal Challenges of Shari’ah-Compliant Banking Operation, its Developmental Impacts and the Struggles of the Believers: Epistemological Lessons from Nigeria P.49, Ahmad, I.M. Risk Management System; A Tool for Developing a Viable Islamic Finance Industry in Nigeria paper presented at IIIT North-East Zonal Office, Maiduguri (30<sup>th</sup> March, 2014) P.6

<sup>138</sup> Ibid.

<sup>139</sup> By the CBN bank reform of 2005 that resulted in the merger of HNB

and Platinum Bank Plc., which was known as Platinum Habib Bank Plc., nothing is heard of the former HNB Non-Interest Banking Scheme any longer. See Abdulqadir, Interest-Free Window of the Defunct Habib Nigeria Bank: A Test-Run for Islamic Banking System in Nigeria Pp. 144-145. As a result of 2009 intervention, the Governor CBN exercising his powers announced the firing of the chief executive officer (CEO) and board of directors of bank PHB. The bank is now see Ahmad, I.M. Risk Management System; A Tool for Developing a Viable Islamic Finance Industry in Nigeria P.9

<sup>140</sup> BOFIA

<sup>141</sup> Abdulqadir, Interest-Free Window of the Defunct Habib Nigeria Bank: A Test-Run for Islamic Banking System in Nigeria Pp. 142-143, Orisankoko, Socio-Economic and Legal Challenges of Shari’ah-Compliant Banking Operation, its Developmental Impacts and the Struggles of the Believers: Epistemological Lessons from Nigeria P.51.

<sup>142</sup> Ibid.

<sup>143</sup> Yusuf, I. A. Much ado about Islamic banking available at

(<http://www.thenationonline.net/2011/index.php/business/10464-much-ado-about-islamic-banking.html>), assessed on 04-07-2011 cited in Orisankoko, Socio-Economic and Legal Challenges of Shari’ah-Compliant Banking Operation, its Developmental Impacts and the

The window was said to have developed to a full fledged department which had always met both its deposit and profit targets.<sup>144</sup>

It was argued<sup>145</sup> that the claim of the success of the operations of the HNB Non-Interest Banking Scheme on the basis of the development of the products from window to a

full fledged department, is difficult to be ascertained on the strength of the compliance of its products and operations to

SG principles or credible report from the CBN. A number of the terms and conditions governing the operation of the

products of its Islamic window were confirmed to be compliant to the Islamic law, while some of them were inimical to Shari'ah requirements. It was further

argued<sup>146</sup> that the non-existence of Shari'ah Supervisory Council or Board at the CBN and HBN, which is the custom and

practice of IFIs, compounded the situation.

Jaiz International Bank was incorporated in 2003 to operate banking and financial business in accordance with

Shari'ah. A lot of efforts were made but Jaiz could not take-off, because of its failure to meet up with the CBN requirements.<sup>147</sup> It has been argued that

absence of governance and regulatory framework for the operation of IFIs in Nigeria was the main reason for the failure of efforts to operate IFIs.<sup>148</sup>

Research undertaken by Central Bank of Nigeria

(CBN) and National Insurance Commission (NAICOM) indicated significant religiously based objections to conventional finance structures,<sup>149</sup>

and given the increasing number of requests from persons, banks and other financial institutions desiring to offer financial products and services based on

Islamic commercial jurisprudence in Nigeria, the CBN, NDIC, NAICOM and SEC have developed SG

Struggles of the Believers: Epistemological Lessons from Nigeria Pp.51-52.

<sup>144</sup> Abdulqadir, Interest-Free Window of the Defunct Habib Nigeria Bank: A Test-Run for Islamic Banking System in Nigeria Pp. 142-143

<sup>145</sup> Ibid.

<sup>146</sup> Ibid.

<sup>147</sup> Jaiz was able to meet up with the CBN requirements Mid-2011. See Dogarawa, The Historical Development of Islamic Banking and the Nigerian Experience P.131.

<sup>148</sup> Ibid.

<sup>149</sup> 1.0 of CBN Guidelines P.3, 1.2 and 1.11 of NAICOM operational Guidelines 2013.



framework for the regulation and supervision of IFIs. As this study is concerned mainly with the CBN and NDIC frameworks, reference to other frameworks will only be made in passing where it is desirable.

CBN released a draft framework for SG in 2009.<sup>150</sup>

The draft attracted comments and observations from stakeholders for two years before its final version was released in 2011.<sup>151</sup> CBN issued the new guidelines for the operation of Non-interest banking in Nigeria based on the outcome of the review of the earlier guidelines issued on the recommendations of various stakeholders.<sup>152</sup>

The new guidelines clarify the contextual definition of Non-interest banking which is not restricted to Islamic

banking. Another significant review is the removal of any reference to Shari'ah Council/Committees which has been changed to Advisory Council/Committees of Experts whose responsibility includes advising the CBN on the appropriateness of relevant financial products to be offered by the deposit money institutions.<sup>153</sup>

However, CBN has recently approved some guidelines that complement the existing CBN guidelines in complying with SG principles. The guidelines are; Guidelines on the Governance of CBN Financial Regulation Advisory Council of Experts (FRACE) and Guidelines on the Governance of Advisory Committees of Experts (ACE) for Non-Interest (Islamic) Financial Institutions in Nigeria. However, Exposure Draft Guidelines on Corporate Governance for Non-Interest (Islamic) Financial Institutions (NIFIs) in Nigeria is yet to be approved.<sup>154</sup>

Nigeria Deposit Insurance Corporation (NDIC) also released a Draft Framework for Non-Interest Deposit Insurance Scheme.<sup>155</sup> This was because of the establishment

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<sup>150</sup> See the CBN site; [www.cbn.com](http://www.cbn.com)

<sup>151</sup> Abdullahi, M.M. CBN Press Release 21<sup>ST</sup> June, 2011 available at [www.cbn.com](http://www.cbn.com) accessed on 8<sup>th</sup> May, 2013.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid.

<sup>154</sup> All the Guidelines are available at the CBN site. See [www.cbn.com](http://www.cbn.com). The exposure draft was not displayed in the site of the CBN because it was not approved. Extracted from an interview conducted with a member of FRACE of the CBN by the researcher in Abuja on 3<sup>rd</sup> September, 2013.

Though the FRACE and ACE governance guidelines were approved in February 2015. See the CBN site.

<sup>155</sup> In September, 2011. See [www.ndic.com](http://www.ndic.com). Being a requirement of the law for all financial institutions to insure their deposits with NDIC, when

(Islamic) Financial institutions by the CBN which necessitated the extension of Deposit Insurance coverage to the depositors of such institutions in order to provide a level playing field for all deposit-taking financial institutions and ensure that holders of Non-Interest IFIs products are adequately protected.<sup>156</sup>

NDIC insures certain deposits under the scheme<sup>157</sup> which include; Safe Keeping Deposit (Wadi'ah), Interest free Deposit for Investment (Qard) and Profit Sharing /Loss Bearing Deposit (Mudarabah). The NDIC will ensure that the Non-Interest Deposit Insurance Fund are clearly segregated by establishing a Non-interest (Islamic) Deposit Insurance Fund (NIDIF) separate and distinct from the Deposit Insurance Funds (DIF) of the conventional Deposit Money Banks and Special Insured Institutions Fund (SIIF) of Special Insured Institutions.<sup>158</sup> A mechanism to trace the Funds that are segregated for the NIDIS should be put in

place to ensure that the Funds are not only properly separated but also the monies are not involved in any transaction involving interest (riba) or other prohibited transactions.<sup>159</sup>

The effort of NDIC in coming up with this draft is commendable. It is understood from the provisions of the framework that SG is the ultimate goal. Certain provisions do not contradict SG principles while others are inimical to Shari'ah which requires the intervention of fuqaha (Islamic jurists), albeit, the whole scheme should be evaluated to ascertain compliance with SG principles.<sup>160</sup>

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the CBN introduces NIFIs governance framework, NDIC came up with this draft. See sections 5, 20, 22 and other relevant provisions of NDIC Act, CAP. N102, LFN 2004.

<sup>156</sup> Paragraph 1.0 of Draft Framework for Non-Interest Deposit Insurance Scheme.

<sup>157</sup> Paragraph 5.2, Ibid.

<sup>158</sup> Paragraph 5.5, Ibid.

<sup>159</sup> Paragraph 5.5.1, Ibid.

<sup>160</sup> Evaluating the provisions of NDIS in Shari'ah scale is not the aim of this study, some of the provisions of the Draft were discussed here in the course of examining SG principles of IFIs to give floor to the discussion.

Moreover, the scheme claims compliance with SG principles. See paragraph 5.5.1 of the draft.

## Conclusion

SG is an exclusive peculiarity of IFIs and therefore appropriate mechanisms are created to ensure compliance with the Shariah principles. The principles of SG are a source based concept that has developed from the early period of Islam. SG developed from the early period up to the modern finance industry based on the sources of Shari'ah and in consideration for the demand of a particular time. However, with the advent of colonisation virtually all the elements of Islam entrenched in the financial system had been uprooted, until recently. Efforts were made in Nigeria to establish Shari'ah compliant finance industry which prompted the promulgation of BOFIA that was seen as the first step by government towards recognition of the yearnings of Nigerians to establish IFIs. Consequently, some Islamic windows of conventional banks like HNB sprang up. Jaiz bank could not take-off until 2011 due to lack of regulatory framework and failure to meet up with the existing CBN capital requirements at that time.

CBN released guidelines for the regulation and supervision of IFIs in Nigeria in 2011 which facilitates the takeoff of Jaiz bank, the first licensed IFI and Albarka the first Islamic Microfinance bank. CBN recently approves two more long-awaited Drafts Guidelines in 2015; Guidelines on the Governance of Financial Regulation Advisory Council of Experts (FRACE) and Guidelines on the Governance of Advisory Committee of Experts (ACE). They were issued to complement the existing guidelines on SG in Nigeria. Guidelines on Corporate Governance is still a draft waiting for approval. Development of SG in IFIs in Nigeria is on course as some of the guidelines are still at drafts stage. While it is expedient to give approval to the guidelines in need of same, it is more important to issue and enforce more governance standard in line with international best practice as Muslim are journeying back to the precinct al-Madinah of the holy Prophet in their economic and financial affairs.