

**SHARIAH ENFORCEMENT BY HISBAH: A CONSTITUTIONAL DEROGATION****Adedeji Akem Z. Okemuyiwa, Ph.D**

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**ABSTRACT**

The institutional obligation of law enforcement in Nigeria has recently been a subject of debate. This paper argues that the Nigeria Police is the only institution that is constitutionally vested with the power of law enforcement in the country. This includes the enforcement of the Shariah Penal Laws that are introduced by some states of the federation. Nevertheless, it is agreed that Hisbah can assist the police in its duty of enforcement of the Shariah Penal Laws due to the line of reasoning that the laws are state laws while the Nigeria Police is a federal institution, however, such assistance must be within the scope of the 'duties of the citizens' that is applicable to every Nigerian. It, therefore, concludes that the constitution is very clear about the power of states of the federation to make law, *viz a viz*, the duty of the Police to enforce all the laws of the federation, regardless of whether such law is federal, state or local government law.

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**KEYWORDS:** Law Enforcement, Shariah Penal Law, Nigeria Police, Hisbah.**INTRODUCTION**

One of the two significant changes to the Nigeria Legal System in 1999<sup>1</sup> was the reintroduction of the Shariah Penal System in about 12 states in the Northern part of Nigeria. Although the introduction was greeted with wide condemnation, it has survived the initial onslaught to remain part of the Nigeria Law. Indeed, the punishment prescribed by classical Shariah Law has been imposed in a couple of cases, while the punishment of amputation has been reported on at least one occasion.<sup>2</sup> This isolated instance of the implementation of the Shariah Penal System is, however a sad reflection of the enthusiasm that greeted the reintroduction of Shariah Penal System about 1<sup>1/2</sup> decade ago. Despite the enactment of several legislations and the establishment of various courts<sup>3</sup> to assist in the full implementation of the Shariah Penal System, the Law seems to be in

abeyance. The lack of good faith by the protagonists of the Shariah penal system has been canvassed as a principal reason why the project was bound to fail ab initio. But considering the number of institutions that have been established to assist in the implementation of Shariah this position seems unsustainable. This paper argues that Shariah Penal System implementation is facing problems because it is a state effort while the Nigeria Police, the only coercive institution in Nigeria is federally controlled. Yet, this ought not to create any problem if one clearly appreciates the power of the component states of Nigeria to make law, *viz a viz*, the duty of the Police to enforce same. In this paper, we shall examine the legal role of Police in the enforcement of law generally. We intend to make the point that the Nigeria Police is constitutionally bound to enforce Shariah Penal Laws notwithstanding the fact that they are state laws. In between, we shall examine the institution of Hisbah created by the states implementing Shariah Penal System following the apathy of the regular Police to enforce Shariah Law. We shall conclude by arguing that both the regular Police and the institution of Hisbah and eminently qualified to enforce Shariah Penal Laws.

**Legal Roles of Police**

Although the 1999 Presidential Constitution of Nigeria establishes a Police Force in Nigeria, the *grundnorm* of Nigeria Legal system is silent on the role of the foremost security outfit. This is quite surprising considering the fact that other national institutions which are constitutional creation have their roles and functions well spelt out in the Constitution itself. Ordinary legislation has, however,

<sup>1</sup> The other significant change to the Nigeria Legal system in 1999 is the restoration of democratic rule by the junta of General Abdul Salami Abubakar. Apart from the fact that the restoration came after about 14 unbroken years of military dictatorship, constitutional government signifies supremacy of law as against arbitrariness while the individual liberties of citizens are at the same time guaranteed.

<sup>2</sup> In C.O.P. V. Amina Lawal & Anor. Suit no K/9/2002 (unreported) the 1<sup>st</sup> accused was convicted for adultery and sentenced to death by stoning. Also on the 24<sup>th</sup> March, 2000 Bello Garki Jangedi's hand was amputated for stealing retrieved from <<http://news.bbc.co.uk/2/hi/world/africa/688639.stm>> Accessed on 26<sup>th</sup> of November 2013.

<sup>3</sup> Some of the noticeable legislations enacted to and Shariah implementation are Shariah Criminal Procedure Code which provides for the procedure to be followed in the trial of offenders, The liquor Repeal Law which prohibits the drinking of alcohol in specified areas and the Shariah Court's Law which creates Shariah Court with jurisdiction to try person who violate the provision of Shariah Penal Code Law.

taken care of whatever lacuna that exists in the constitutional provision(s) establishing the Police Force. Section 23 and 24 of the Police Act<sup>4</sup> which is enacted pursuant to section 214 (2) (a) & (b) of the 1999 constitution clearly list the power of the Nigeria Police to include any of the following:

- a. Prevention and detection of crime
- b. Apprehension of offenders
- c. Preservation of lives and property
- d. Enforcement of all laws and
- e. Prosecution of offenders.

Each of these will be briefly discussed.

### Prevention and Detection of Crime

S24 of the Police Act authorizes the Nigeria Police Force to detect and prevent crime. In exercising the statutory power of preventing crime, any Policeman may apply to any Court to summon any person who is likely to commit a breach of the peace or illegal acts. Where necessary, such allegation is proved, such person may be ordered to keep the peace or refrain from illegal acts for a period not exceeding one year. Breach of the condition imposed may lead to a term of imprisonment. Prevention is better than cure and the foregoing power ensure that the Police are not called upon to do only damage control.

The statutory role of detecting crime vested in the police is to ensure that the criminally minded are consistency reminded that breach of laws cannot go undetected. The Police in trying to unravel a crime are authorised to arrest with or without a warrant and where necessary may interrogate suspects. In appropriate cases, Police is authorized to detain an arrested person upon the conclusion of the investigation and or arraignment in court. In appropriate cases, search may be conducted on the premises of a person being investigated.<sup>5</sup>

### Prosecution of Offenders

Another significant role of the police under the Nigeria Legal System is the power to prosecute for any offence, however, it may be described. Until 2006, the Police power to prosecute was believed to be limited to the inferior court. This assumption was,

however, held to be wrong by the Nigeria Supreme Court in the case of *FRN V. Osahon*.<sup>6</sup>

The facts of the case is that, the respondents were arraigned before the Federal High Court; Lagos on a 6 count charge filed by officers of the Nigeria Police on 18<sup>th</sup> January 2001 under the Miscellaneous Offences Decree no 20 of 1984. In the course of proceedings, the respondents filed an application seeking to quash the charge on the ground that by virtue of section 174 (1) (a) of the 1999 Constitution, it is only the Attorney General and officers of his department that can institute or undertake criminal proceedings against them on behalf of the government of the federation in that court.

The Police officers contended that they had powers under s23 of the Police Act to prosecute the respondents before the Federal High Court. It was further argued on their behalf that they did not require the fiat of the Attorney General of the federation to initiate and prosecute the charge. The trial court held in its ruling that police officers had powers to prosecute the respondents on behalf of the government of the federation. On appeal to the Court of Appeal, the ruling of the Federal High Court was set aside as a result of which the Police lodged a further appeal to the Supreme Court. The Supreme Court by a majority of 5-2 (Musdaphar & Onnoghon dissenting) held that by virtue of S174 (1) b of the 1999 Constitution the power of the Attorney General of the Federation (and by the same extension that of a state) to institute criminal proceedings in all courts is not exclusive but coexists with the power of any other person or authority to institute criminal proceedings:

The apex Court further held that any other authority in paragraph b and c of S174 (1) of the 1999 Constitution is wide enough to accommodate the Police. In the opinion of their lordships, for any person to appear in the superior court of record to prosecute any case, civil or criminal the person is presumed to be a legal practitioner as provided in the Legal practitioners Act in view of the fact that superior courts of record have attained the tradition of only legal practitioner prosecuting cases before them. That as a matter of strict interpretation of the law, police authorities can, by virtue of the aforementioned provision of S174 (1) of the Constitution, prosecute any criminal suit either through its legally qualified officers or through any of its officers or any counsel engaged for the purpose.

Although the rights of police to prosecute in Nigeria Court now seem to be without limit, it is still subject to the overall control of the Attorney General and Commissioner for Justice. By virtue of Sections 177

<sup>4</sup> Cap 359 laws of the federation 1990.

<sup>5</sup> The power to arrest and detain is strictly governed by the 1999 Constitution of the Federal Republic of Nigeria which limits the period of detention to 24hours as a matter of general rule. See section 36 of the Constitution which also mandates the Police to state the reason for the arrest. Interrogation of suspect must also follow the judges rule as a matter of law in Northern part of Nigeria and as a matter of practice in Southern Nigeria, although interrogation conducted in breach of the Judges' rule does no damage to evidence elicited by the police, In the cases of *R V. Anya Ugwuogo & anor*(1943)4 WACA 73 and *R V. Jackson Akpor Uwo & ors* (1944) 10 WACA 254. Search of suspected person must also follow specified procedure prescribed by the Criminal Procedure Code and Act although a breach of any of the procedures specified therein does not make any evidence obtained thereof inadmissible. In the case of *Kuruma V. R* (1955)1 A11ER 236.

<sup>6</sup> (2006) 2SCM 15.

and 211 of the 1999 constitution of Nigeria the Attorney General of the Federation and those of the states can take over and discontinue any criminal proceedings in any Courts in Nigeria<sup>7</sup>. Another restriction of the power of the police to prosecute for criminal offences is the immunity clause contained in section 308 of the 1999 Constitution of Nigeria which prohibits an institution of any criminal complaint against a serving Governor or the President of the republic. In the case of *Tinubu V. IMB Securities Plc*<sup>8</sup>. Iguh J.S.C. Explains the effect of S308 of the Constitution of Nigeria in the following words:

*“The immunity granted to the incumbent of the relevant office  
Under section 308 (1) (a) of the 1999 Constitution prescribes  
an absolute prohibition on the courts from entertaining  
any proceedings, civil or criminal, in respect of any claim  
or relief against any person to whom that section  
of the constitution applies during the period he holds such  
office. Therefore no question of waiver of the relevant  
immunity by the incumbent of the offices concerned or  
indeed by the court will arise”.*

In a few exceptional cases, the statute of limitation may also prevent the police from undertaking criminal prosecution. For example, prosecution for a crime committed under the Customs and Excise Management Act becomes statute barred after 7 years from the date that the cause of action arose. Under the criminal code no charge for the offence of treason can be preferred after 2 years from the date of the Commission of the offence of defilement can no longer be maintained after 2 months from the date of the alleged defilement. In the case of *Mayaki V. State*<sup>9</sup> prosecution for the offence of defilement was commenced by the police about 20 months after the defilement. The accused was convicted for the offence of indecent assault, which was a lesser offence, on appeal against the conviction; it was held that the whole trial was a nullity.

### **Maintenance of Law and Protection of Lives and Properties**

Under the Police Act, maintenance of law and order is separately listed as one of the legal roles of Police Nigeria, Ditto with the duty of protection of lives and

properties. The position taken by this paper is that these responsibilities have already been taken care of by the detective, investigative and prosecutorial process already highlighted above and nothing useful will be gained by repeating the points earlier on made again.

To ensure that the Nigeria Police discharge its statutory role effectively the Nigeria Police is organised into various state commands, all of which are under the control of the Police Force Headquarters at Abuja. Each of the various State commands is headed by a Commissioner of Police who supervises the several Area commands in the state. To ensure that policing gets to the grassroots Divisional Police Commands which report to the Area command within their jurisdictions are also established.

State Police Commissioner is under obligation to take all lawful directives from the State Governors, subject to the extent permitted by the Law. In effect, although there is a unified Police in Nigeria, Policemen in Nigeria serve several masters that are the Central and the various state governments that make up the Federal Republic of Nigeria. The Police Force headquarters in Abuja is broken to about six departments, each headed by a Deputy Inspector General of Police. This administrative structure is also to ensure that Police discharge their legal roles effectively.

### **Police and Shariah Enforcement**

It is not unlikely that the various states practicing Shariah Penal System took the enforcement of the Shariah Penal Law for granted at the time of the enactment of the various Shariah Penal Laws. As a system of law that was only in abeyance for about 4 decades before its reintroduction Shariah Penal System never experienced the problem of enforcement during the colonial and pre colonial Nigeria. Post independent constitutions, especially those of 1979 and 1999 have, however, affected policing system in Nigeria. With the prohibition of multiple policing by the constitution of the Federal Republic of Nigeria 1999 only one Police is now saddled with enforcement of all laws be it state or federal.

The unified policing system is not without some attendant consequences for Shariah implementation. Police personnel, many of whom do not share the Shariah belief now hold strategic positions in Police Command of the states practicing Shariah Penal System. The natural effect of this lack of apathy in the enforcement of a law considered to be esoteric. There is no better evidence to support Nigeria Police lack of enthusiasm in the enforcement of Shariah than the complete absence of a department to oversee Shariah related offences in the Police Command of

<sup>7</sup> The Supreme Court of Nigeria has made the point that in the exercise of power of nolle prosequi, the Attorney General is a master unto himself, under no control whatsoever, judicial or otherwise. See the case of *Ilori V. State* (1986) SCNLR 94.

<sup>8</sup> (2001)16 NWLR (pt740)670.

<sup>9</sup> (1981) NCR25.

the states practicing Shariah Penal System. It is also a fact that the Shariah Penal System is not part of the curriculum of the Nigeria Police Academy and the various Police Colleges.

Apparently frustrated by the attitude of the Nigeria Police Force to the enforcement of the Shariah penal system, the majority of the states implementing Shariah have decided to take their destinies in their hands.<sup>10</sup> The result is the establishment of adhoc security agents called Hisba<sup>11</sup> by some of the Northern states practicing Shariah Penal System, which are now saddled with the responsibility of enforcing the law.

### Hisbah and Shariah Enforcement

The idea of Hisbah as a law enforcement agency of the states operating Shariah is neither a unique or new concept to Nigeria. In the Islamic world, Hisbah refers to any organization set up to promote godliness and prevent improper conduct. Islamic Jurists believe that Hisbah enjoy the support of Allah since the Holy Quran itself states as follows:

*“And appoint a group from yourselves whose duty is to invite to goodness and enjoying the right and forbid wrong.”*<sup>12</sup>

Under the Classical Islamic Law the institution of Hisbah ensured conformity to Islamic moralities and the law of the land. In appropriate cases, punishments are meted out to those who break the law are often Islamic morality.

To qualify as a member of the institution of Hisbah during the era of Classical Islamic Law, a person must possess the following qualifications to wit, he/she must be a Muslim, an adult, righteous, only authorised and fear Allah. Under the Classical Islamic Law the operation of Hisbah must be governed by the principle of Shariah. Accordingly, Hisbah personnel must uphold justice among the

people, perfect personalities and dignities of people while maintaining the tradition and usage of Islam.<sup>13</sup>

Therefore when some of the states practicing Shariah Penal System decided a romance of Hisbah, they are only imitating the practice in the classical Islamic Law era, a practice that is equally found useful in modern Islamic States like Saudi Arabia and Pakistan. Unlike the Classical Islamic Law, the establishments, powers and functions of Hisbah in Nigeria is strictly governed by statute.<sup>14</sup> Although, the law dealing with Hisbah vary depending on the state the subjects that the various law deals with are almost the same. Specifically the various Hisbah laws deal with subjects like the role of Hisbah in the country, relationship between Hisbah as Judges, relationship between Hisbah as Police.

With regards to the role of Hisbah in governance, Section 6(7) of the Zamfara State Hisbah Commission (Establishment) Law for instance empowers the Hisbah to ensure conformity with Shariah in all activities of state and local government and to advise state and local government councils on all issues concerning the implementation and application of Shariah.<sup>15</sup> The effect of this law is to recognize the Hisbah commission as a major adviser of the government on all matters pertaining to implementation of Shariah and its provision is strictly adhered to it means the decision of the commission on any Shariah related matters is binding on government at all levels.

The Hisbah Commission has also been given the power of monitoring the daily proceedings of Shariah Courts in order to ensure that justice is delivered without fear or favour<sup>16</sup>. In a country like Nigeria where Justice is compromised by graft, legislation like this is a welcome development. But by far the most important provision in the Law relating to Hisbah in Nigeria is one that empowers the Hisbah Commission to arrest for offences committed against Shariah Penal Legislation and thereafter hand over the arrested offender to the Police.<sup>17</sup>

<sup>10</sup> Some of the states that have established Hisbah for the purpose of Shariah enforcement are Bauchi, Kano and Zamfara states.

<sup>11</sup> It was initially thought that Shariah will serve as a catalyst for new social order in Nigeria. See for example Isjhaq Akintola, Shariah in Nigeria (Shebiotimo Publications, 2001) pp 212 – 260. Evidence on ground points to the facts that the optimism of Shariah protagonists must have been misplaced. Only one incident of amputation has been recorded while no penalty of stoning has ever been carried out. On the 24<sup>th</sup> March, 2000 Bello Garki Jangedi's hand was amputated for stealing retrieved from <<http://news.bbc.co.uk/2/hi/world/africa/688639.stm>> Accessed on 26<sup>th</sup> of November 2013.

<sup>12</sup> Holy Quran 3 V 103. It is also believe that the Holy prophet Mohammed in his life time appointed men and women to oversee the enforcement of public morals. One good example is the appointment of Umar B. Khetab as al- muhtasib of Madina and Sad b. in Meccah to prevent middlemen from making excessive profit. See K.Z. Yusuf, Fiqh Islamic Law & Usul Al- Fiqh in [www.islamonline.org](http://www.islamonline.org).

<sup>13</sup> Ahmed S. Garba, “The place of community policing under Shariah and advent of Hisbah” retrieved from <[www.ganji.com/article6000/News/6178htm](http://www.ganji.com/article6000/News/6178htm)> Accessed on 16<sup>th</sup> of December 2013.

<sup>14</sup> See BAUCHI State Shariah Commission Law 2001, Kano State Hisbah Board Law 2003 and Zamfara state Hisbah commission(Establishment) Law 2003.

<sup>15</sup> There is no equivalent of this provision in Bauchi and Kano states laws, although in Bauchi Law, the Hisbah Commission can advice the government on the implementation of certain Islamic injunction. See Ahmed Garba, *Op cit* @ pg 18.

<sup>16</sup> Section 6(3) of The Zamfara State Hisbah Law.

<sup>17</sup> Section 9(1) of the Zamfara State Hisbah Law. Section 7(4)(1) of the Kano State Hisbah Law is however not explicit in this regard. The Kano State Hisbah Law only empowers personnel of the Hisbah Commission to render necessary assistance to the Police in the areas of operation, detention and reporting of offences. In Bauchi state, the status of the Hisbah Commission extend to that of prosecution. Under Section 15 (5) of the Shariah Commission

**Constitutional Challenges Facing Hisbah**

The establishment of Hisbah by some states in Northern Nigeria was not without some form of opposition. Not quite long after its establishment, the federal government of Nigeria declared the laws establishing Hisbah Commission and their activities as illegal.<sup>18</sup> The threat by the Inspector General of Nigeria police to clamp down on personnel of the Hisbah Commission compelled the government of Kano state to approach the Supreme Court,<sup>19</sup> the case was however aborted midway because the Supreme Court observed that the Inspector General of police against whom complaints were made was not a party to the action.

It was further held that even if the Inspector General of Nigeria police had been made a party to the action the Court would still have declined jurisdiction because it cannot exercise original jurisdiction in a matter involving the Inspector General of police. Thus the opportunity for a judicial resolution of the Constitutionality or otherwise of Shariah seems to be lost for now. Pending a judicial resolution of the controversy, however, one can attempt a discussion on the issues that are clearly involved. A major reason while the establishment of Hisbah has faced unending criticism is its apparent negation of the Constitutional provision that recognizes only a single Police force.

While it may be difficult to fault this argument, the position taken by this paper is that the sanctity of the provision of S214 of the Constitution seems to have been compromised very many years ago. Organizations like the National Drug Law Enforcement Agency (NDLEA), Independent Corrupt Practices and other related offences Commission (ICPC) and Economic and Financial Crimes Commission Act (EFCC) or ad hoc agency set up by the federal government of Nigeria to tackle special crimes.<sup>20</sup>

Considering the amplitude of the powers of the above security agencies there can be little doubt that they exercise Police powers using a different acronym. Both the Laws establishing the EFCC and the I.C.P.C

not only authorize the 2 agencies to prevent and detect crime, but they also prosecute persons suspected to have committed an offence.<sup>21</sup> The only difference is that whereas there is no restriction on the investigation and prosecutorial powers of the Police, the I.C.P.C and EFCC are both restricted to few related offences.

It is submitted with respect that Hisbah is a child of necessity much as the EFCC and the I.C.P.C are products of exigency. It matters very little that on being a creation of the federal government while the other is state effort. In any event, S5 (2) of the 1999 Constitution clearly provides that the executive power of a state shall extend to the execution and maintenance of the constitution and all laws made by the House of Assembly of a state and to all matters with respect to which the House of Assembly has power to make laws.<sup>22</sup> Chief Justice Marshall once has cause to comment on the power of a state in a federal structure to enforce its law when he observed as follows:

*“We hold it to be incontrovertible principle that the government of the United States may, by means of physical force, exercise through its official agents, execute on every foot of American soil the power and functions that belong to it. This necessarily involves the power to command obedience to its laws and hence the power to keep peace to that extent. The power to enforce its laws and to execute its functions in all places do not derogate from the power of the state to execute its laws at the same time and in the same places. The one does not exclude the other except where both cannot be executed at the same time.”<sup>23</sup>*

It is submitted that the institution of Hisbah is both legal and legitimate and duly supported by the

Law, the commission is empowered to conduct legal proceedings through the office of the Attorney General or with his consent through any legal practitioner of his choice.

<sup>18</sup> Ayodele Toafik Ogundele, "Between Hisbah, FG and Terrorism," retrieved from < <http://www.gamji.com/article5000/NEWS5666.htm> > Accessed on 17<sup>th</sup> of December 2013.

<sup>19</sup> See the case of Attorney General of Kano State V Attorney General of the federation S.C./26/2007.

<sup>20</sup> While the ICPC which was established in year 2000 is saddled with the responsibility of investigating graft in public offices, the EFCC investigates sundry crimes like advanced fee fraud, money laundering, illegal charge transfers, fraudulent cashment of negotiable instruments and compute credit fraud. The NDLEA investigates crime relating to exportation and importation of hard drugs.

<sup>21</sup> Section 5(1)(b)&(f) of the Economic and Financial Commission (Establishment) Act list the functions of the body to include investigation and prevention of financial crime while section 12(2) of the same law authorizes the legal and prosecution unit to prosecute offenders.

<sup>22</sup> None of the provision of S5(3) which explain the extent of a state power with respect to the law it has enacted can be construed as limiting the power of a state to establish an institution to enforce its law. For purpose of clarity, S5(3) of the 1999 Constitution is hereby reproduced in full.

S5(3) The executive powers vested in a state under subsection(2) of this section shall be so exercised as not to:

a. Impede or prejudice the exercise of the executive powers of the federation.

b. Endanger any asset or investment of the Government of the federation in that state.

c. Endanger the continuance of a federal government in Nigeria.

<sup>23</sup> See Ex P. Stebold 100 U.S. 371 (1880) at page 395.

Constitution. What will be illegal is to give it the acronym of Police”

### The Way Forward

This paper has justified the establishment of Hisbah institutions on the ground that no constitutional provision outlaws the institution of Hisbah. But legality is one thing while practicability is another.<sup>24</sup> The truth is that the Police are still better placed to enforce Shariah Penal System than any other public institution. As an institution that predates the colonial era, Nigeria Police is blessed with officers and men who can assist in the enforcement of Shariah. The problem in our view at the moment is the lack of proper understanding of the place of the Shariah Penal System in the Nigeria Legal System.

Put in another way, the real obstacle the effective implementation of Shariah is the doubt that exists among the officers and men of the Nigeria Police who see the enforcement of Shariah as the promotion of one religion.<sup>25</sup> Yet there ought not to be any dispute about the position of Shariah Penal System and the duty of the Nigeria Police to ensure its enforcement if all the parties involved understand the constitutional position.

Like in most Federal States, the power to make law in Nigeria is divided between the National Assembly and the various state House of Assembly. Whereas the National Assembly have exclusive powers to make Laws with respect to any matter contained in exclusive legislative list as set out in part I of the second schedule to constitution and the concurrent legislative list set out in the first column of part II of the second schedule to the extent prescribed in the second column, the states House of Assembly have powers to make law in respect of any matter in the concurrent legislative list set out in the first column of part II in the second schedule of the Constitution to the extent prescribed thereto.<sup>26</sup>

Although the National and State House of Assembly may legislate on certain items together, the laws validly made by National Assembly will prevail in the case of any inconsistency. The states however reserve the right to legislate on matters that are not included in either the exclusive or concurrent lists. In the opinion of Prof. B.O. Nwabueze while both National and State Assemblies may create offence (s) under legislation enacted by them, the powers of enacting a comprehensive legislation creating criminal offences lies with the state because it is

<sup>24</sup> The use of arm and ammunition is a subject under the exclusive, legislative list. Without arm and ammunition, it will be very difficult to execute the power of coercion.

<sup>25</sup> One of the constitutional provisions often acted to justify the “illegality” of Shariah Penal System is section 10 of the 1999 constitution which prohibits the adoption of a state religion.

<sup>26</sup> Section 4 of 1999 Constitution of Nigeria.

residual matters.<sup>27</sup> On the authority of the above constitutional provision and the submission of one of Nigeria’s foremost authorities on constitutional law, it is submitted that the Shariah Penal Codes in 12 of the Northern Nigeria States which were enacted into Law by various State House of Assembly and subsequently assented to by the various State Governors are valid Laws within the contemplation of the 1999 Constitution of Nigeria.

Doubts or no doubt exists as to whether or not some of the penalties prescribed by the Shariah Penal Law can stand the test of constitutional validity. It is submitted that this is an assignment for the court and not the police. Any law validly passed by the state of National assembly and duly assented to by the President or Governor remains a valid law until repealed by the parliament or declared null and void by the judicial arm of government.

### CONCLUSION

The initial criticism of Hisbah in Nigeria has taken a backstage. However, the ghost of the controversy may yet appear soon, especially as the next general election is fast approaching. If past experience is anything to go by, there is likelihood of opening of old wounds and resuscitation of forgotten prejudices and old arguments. The open bias in the central government being shown by the federal police may yet make confrontation between the Hisbah Commission and the regular police a possibility. The time to obtain a judicial pronouncement sanctioning the legality of the Hisbah Commission is now. The only alternative is to insist that the police discharge their constitutional roles.

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