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“Toward an Islamic constitutional Government in Sudan<sup>©</sup>”

By: Ismail bin Matt<sup>®</sup>, Ph.D.  
(University of Brunei, Darussalam):

*I. Introduction*

The controversy and political debate on the establishment of an Islamic Constitutional Government in the Sudan has never ceased between the “Islamists”- the proponents of reinstatement of the Shari’ah order, and the “modernists” – the opponents who prefer the liberal democracy of western model, or socialism. Since the attainment of its independence in 1956, the Sudan experienced a series of governmental change which has oscillated between parliamentary democracy of western-style and military regime. A preview of the Islamic background of modern history of Sudan will make one assess the trend and significance of the modern struggle for an Islamic constitutional order. It is worthy to note that in the Sudan, traditional Islamic institutions have shown a remarkable strength which is due mainly to the special circumstances of the Sudan and the role played by its Muslim leaderships. Historically, Islam had been intertwined with the political development of the Sudan through both direct and indirect involvement in politics. Islamic leaders and groups have consistently been part of the political process due to changing political conditions. Islam played a more direct role in the Funj Sultanate (1504-1820)<sup>2</sup> and the Mahdi State (1885-1899), providing the basis for legitimacy, identity, and state ideology. The Funj Sultanate was the most important kingdom before Muhammad ‘Ali’s army invaded Sudan and established the Ottoman-Egyptian rule.

This paper attempts to highlight the historical trend towards the establishment of an Islamic constitutional government in the Sudan. In addition, it also analyzes the role played by the Islamicists in the process of Islamization of constitution as well as legal system and establishment of the *Shari’ah* order.

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<sup>®</sup> Ismail Mat ( Ph.D), Associate Professor, Research Department of Madhhab Shafi’i, Sultan Haji Omar ‘Ali Saifuddien Institute of Islamic Studies, University of Brunei Darussalam.

<sup>2</sup> Funj kingdom based on Sennar rose in the sixteenth century and lasted until the Turco-Egyptian invasion of 1820.

## ***II. Background of Modern History of Sudan***

Historically, Islam had been intertwined with the political development of the Sudan through both direct and indirect involvement in politics. The particularity of the Sudanese situation stems from two considerations: first, in the Sudan the process through which Islam has become associated with its politics and ideology greatly differs from other countries in the Middle East and North Africa; second, the reality and complexity of today's Sudan as a multi-ethnic, multi-cultural, and multi-religious society with a sizeable non-Muslim community.

During the 16<sup>th</sup> and 17<sup>th</sup> centuries, certain political systems arose with allegiance to Islam. To varying degrees dependent upon political conditions, Islamic leaders and groups have consistently been part of the political process. Islam played a more direct role in the Funj Sultanate (1504-1820 AD) which dominated much of the Sudanese Nile Valley, and the Fur Sultanate of Darfur (1600-1916 AD) which dominated much of today's Western Sudan. Although both structures were essentially based on pre-Islamic political and ideological institutions, their allegiance to Islam together with a host of complex of socio-economic and political changes had led to an accelerated Islamization and rapid acculturation (adoption of Arabic-Islamic culture) of Northern and Western Sudan. The process, which evolved over three centuries, reached maturity in the 18<sup>th</sup> and 19<sup>th</sup> centuries.<sup>3</sup> The traditions of Sunni and Sufi orientation (mysticism) were introduced in the Sudan. Thus Islam gradually became integrated into the spheres of politics and ideology alongside other affinities such as kingship and tribalism.

The Funj Sultanate was the most important kingdom before Muhammad 'Ali's army invaded Sudan and established the Ottoman-Egyptian rule (1821-1885). It has been suggested that the growth of trade and the Islamic *turuq* (s. *tariqah*) contributed to the weakening of the Funj kingdom, permitting relatively easy conquest by the Turco-Egyptians. At the same time, the interactions of states, religious groups, and traders were contributing to the emergence of a partially stratified society especially in the central areas of Sudan. Traders brought Islam and Muslim Sufi-leaders established centers where trade occurred, and the Funj Sultanate were said to have adopted Islam and administrative trade. It should be noted that Islamic law and customary practice had been enforced during the Funj Sultanate.<sup>4</sup>

## ***III. Sudan Under Turko-Egyptian Administration***

The Sudan's first contact with Western influence of ideas and techniques was indirect, with the Turko-Egyptian rulers of the nineteenth century being the intermediaries.<sup>5</sup> After the Egyptian conquest of the Sudan and during the sixty years of Turko-Egyptian administration of the country, the law which has been enforced was recent Ottoman law, a mixture of the *Shari'ah* law which mainly concerned with personal law status, inheritance, and customs.

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<sup>3</sup> Abdel Salam Sidahmed, *Politics and Islam in Contemporary Sudan*, Great Britain: Curzon, 1997.,pp. 5-6.

<sup>4</sup> See Safiya Safwat, "Islamic Law in Sudan," in Aziz al-Azmeh, ed., *Islamic Law: Social and Historical Contexts* [ London: Routledge, 1988 ], pp.231-232; M.I.Khalil, "The Legal System of the Sudan," in *The International and Comparative Law Quarterly*, Vol. 20,Pt. 4 [1971 ], pp.626-627.

<sup>5</sup> John Voll, "Islam: Its Future in the Sudan ", *The Muslim World*, Vol. 63, No.4 , 1973, ,p.288.

These laws had been incorporated with some elements of the *corpus juris civilis* in all criminal and civil disputes. The criminal law was administered in accordance with the *Qanun-i Homayun*, an Ottoman code dating from 1837.<sup>6</sup>

The attempt by the Turko-Egyptian rulers to establish a more centralized government in the Sudan which implied restriction upon the relative political and military independence of traditional local leaders, and also to introduce reforms according to Western model which threatened the existing political and religious order, were resisted by some sufi orders, like the *Samaniyyah* with cooperation from others such as the *Khatmiyyah*. Sufism, however, remained the vocal and predominant force in the country.

Two developments in relation to Sufism and with important future implications occurred during this era; namely the introduction of the *Khatmiyyah Tariqah*<sup>7</sup> and the rise of Mahdism. Mahdism arose out of the Sufi tradition. Muhammad Ahmed (1843-1885), a disciple of *Samaniyyah Tariqah*, declared himself as a Mahdi (well-guided or righteous) staged an armed resistance against the Turko-Egyptian regime, ousted it and established a Mahdist State in the Sudan (1885-1899). Resistance gradually became popular uprisings which by 1800s posed a strong challenge to Ottoman sovereignty. The most effective revolt was the one led by Muhammad Ahmad al-Mahdi, who overthrew Turko-Egyptian rule, and established an Islamic state.<sup>8</sup>

Thus, the fall of Khartoum and the killing of General Gordon in January 1885 marks the end of the Turko-Egyptian administration and the Sudan was ruled over by the Khalifah 'Abdullah as its religio-political leader, for al-Mahdi himself died six months after his complete victory and successful establishment of the Mahdi state (1885-1899).<sup>9</sup> The law enforced during Khalifah Abdullah's administration (1884-1898) was the strict code of Islam as set out in the *Qur'an*. He ended the implementation of the Turkish law due to its deviation from the teachings of the *Qur'an*.<sup>10</sup>

The Mahdi movement in particular has left a legacy not only of Islamic identification with the state, but also of the role of Islam as an anti-colonialist force and an integral component of Sudanese nationalism and independence. This is partly due to its revolt against Ottoman-Egyptian rule (1820-1884) and the Anglo-Egyptian Condominium (1899-1956). As a result, Islam is implicit in Sudanese history, identity and nationalism.

During the post-independent period, nationalist leaders had to content with continued

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<sup>6</sup> Egon Guttman, "The Reception of the Common law in the Sudan," *International and Comparative Law Quarterly*, Vol.6, Pt.3 [1957], p.401

<sup>7</sup> The *Khatmiyyah Tariqah* was introduced by its founder Muhammad 'Uthman al-Mirghani in 1818-1820. It spread through the efforts of his descendants in Northern and Eastern Sudan and became a proto-national sect of considerable influence.

<sup>8</sup> P.M. Holt, *The Mahdist State in the Sudan 1881-1898*, 2<sup>nd</sup> ed. [London: Oxford University Press, 1970], p.128.

<sup>9</sup> J. Spencer Trimingham, *Islam in Sudan*, p.95; Mohamed Omar Bashir, *Revolution and Nationalism in the Sudan* [London: Rex Colling, 1974], p.16.

<sup>10</sup> Safiya Safwat, "Islamic Laws in Sudan", pp.234-236.; Gabriel Warburg, *The Sudan Under Wingate: Administration in the Anglo-Egyptian Sudan 1899-1916* [London: Frank Cass & Co. Ltd., 1971], p.129

expectations that Islam would be part of the state's constitution and law.<sup>11</sup> As such, the Sudanese Mahdi represents a particular phase of Islamization of the Sudan. During this time, Islam passes from being a localized cult in a largely pagan society to a universal ideal which is widely accepted by masses and leaders.<sup>12</sup> This period has provided an important reference point for Sudan's political development since it came to be perceived as the first independent Sudanese state and, moreover, it blended the idea of Sudanese nationalism with Islam in an Islamic state. Thus, both political and socio-religious realities of Sudanese history have made Islam a force to be reckoned with by political leaders whatever their personal ideological orientation.<sup>13</sup>

Historically, the period of Muhammad Ahmad al-Mahdi has been accepted as a source of Sudanese inspiration from which Islamic revival and nationalist pride is derived. He is referred to by present-day northern Sudanese as "the father of independence" (*Abu al-Istiqlal*), for uniting the various tribes in the Sudan by an Islamic ideology, deriving out the alien rulers, and laid the foundation of a nation-state.<sup>14</sup>

#### ***IV. The Impact of the Condominium***

The defeat of the Mahdi state in 1899 marked the beginning of an epoch in which the Sudan was governed by the Anglo-Egyptian Condominium until it regained independence in 1956. This colonial rule (also called the "Condominium regime") was to be ruled jointly by both Britain and Egypt, and legalized as such by an Anglo-Egyptian Agreement of January 19, 1899.<sup>15</sup>

The establishment of a Condominium was accomplished upon the recommendation of Lord Cromer, who was then British Consul-General in Egypt. It was embodied in the Anglo-Egyptian Agreement for the Administration of the Sudan", which was signed in 1899. P.M Holt says:

*"The Condominium itself was devised by Lord Cromer as instrument of British control over the newly reconquered territory of the Sudan. The formulae of the Condominium Agreement preserved nominal Egyptian authority over the Sudan, but conferred supreme military and civil power on a Governor-General appointed on the initiative of the British government. In effect, from 1899 to 1924 the Sudan had an autonomous administration under the control of senior British officials. Throughout this period the Sudan was never technically as British colony, and at no time did it come under the Colonial Office".<sup>16</sup>*

Actually the establishment of Condominium opened the way for the intrusion of British

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<sup>11</sup> John L. Esposito, "Sudan's Islamic Experiment," *The Muslim World*, Vol. 76., Nos. 3-4, 1986., P. 183.

<sup>12</sup> John O Voll, "The Sudanese Mahdi: Frontier Fundamentalist," *International Journal of Middle East Study*, 10 [1979], p., 163.

<sup>13</sup> John L. Esposito, "Sudan's Islamic Experiment," p. 183.

<sup>14</sup> P.M. Holt and M.W. Daly, *The History of the Sudan: From the Coming of Islam to the Present Day* [Boulder: West View Press, 1979], p. 87.

<sup>15</sup> Abdel Salam Sidahmed, *Politics and Islam in Contemporary Sudan*...p. 10.

<sup>16</sup> P.M. Holt, "Sudanese Nationalism and Self-Determination," in Walter Z. Laquer, ed., *The Middle East in Transition* [New York: Frederick A. Praeger, 1958 ], p.175.

based legal system. The most important feature of this system is its dual character manifested in the existence of two legal systems, namely the *Shari'ah* and Civil, each comprising its own set of courts which exercise independence jurisdiction and apply different forms of jurisprudence.<sup>17</sup> Lord Kitchner was appointed as the first Governor-General who was to be the supreme legislative authority in the Sudan, on major matters, and especially with regard to all general laws.<sup>18</sup> After the fall of the Mahdi state, the *Shari'ah* law was largely and officially removed from the practical life of the people of Sudan.

The British colonial administration gradually introduced her cultural and legal system to be implemented upon the Sudanese population. Hence, the Condominium Agreement has obviously paved the way for the Sudan to be influenced and governed by British statutes and British common law. The personal law of Egyptian models has been introduced in Sudan. Thus, the policy of the British administration in the Sudan may be generalized as suppression of the *Shari'ah* courts through the establishment of a duality of legal and judicial system namely, the *Shari'ah* and civil, and in addition, setting up lay tribunals wherein those tribal leaders were granted vast administrative and judicial over matters of personal status. The purpose of abolishment of the powers of the *Shari'ah* court was never achieved since from the beginning of 1956 until 1969 the Islamists started to gain their legal and political dominance. As a result, the judicial powers that the native courts had gained were pruned and circumscribed.<sup>19</sup> However, the British based legal system remained enforced until September 1983 in which the Islamic law was proclaimed.<sup>20</sup>

It has been a peculiarity of Sudanese politics that the discussion with regard to issues of the constitution make-up of an independence Sudan, virtually all of the key political parties, except for the Communist Party, called for a more central role for Islam than had existed under British rule.<sup>21</sup> Unlike other Muslim societies, Sudan did not witness the growth of a centralized religious authority in the form of hierarchy of the 'ulama as in Pakistan and Saudi Arabia which enjoy a dominant influence in politics. In fact, the 'ulama of the Sudan could be seen as the more religiously oriented segment of the general class of "educated Sudanese" rather than as a separate class.<sup>22</sup> The Muslim Brotherhood together with the Islamic Front for the Constitution (I.F.C.) and some 'ulama including minor sufi leaders, advocated that Sudan should become an Islamic state, basing both constitution and law solely on the *Qur'an* and the *Sunnah*.<sup>23</sup>

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<sup>17</sup> M.I. Khalil, "Legal System of the Sudan", *The International and Comparative Law Quarterly*, Vol. 20.,Pt.4 [1971], p. 628.

<sup>18</sup> M.W. Daly, *Empire on the Nile: the Anglo-Egyptian Sudan 1898-1934* [ Cambridge: Cambridge University Press, 1986], p. 15.

<sup>19</sup> Salman M.A. Salman, " Lay Tribunals in the Sudan: An Historical and Socio-Legal Analysis", *Journal of Legal Pluralism and Unofficial Law*, No.21 [1983],pp.66-69.

<sup>20</sup> Al-Mikashfi Taha al-Kabbashi, *Tatbiq al-Shari'ahal-Islamiyyah fi al-Sudan Bayn al-Haqiqah wa al-Itharah* [ Cairo: al-Zahra li al-'Alam al-'Arabi, 1407/1986],p.7.

<sup>21</sup> Carolyn Fluehr-Lobban, " Islamization in Sudan: A Critical Assessment", *Middle East Journal*, Vol.44, No.4 [1990],p. 617.

<sup>22</sup> John O. Voll, "The Evolution of Islamic Fundamentalism in Twentieth-Century Sudan," in Gabriel R.Warburg and Uri M.Kupferschmidt, eds., *Islam, Nationalism and Radicalism in Egypt and the Sudan* [New York:Praeger Publishers, 1983], p.118.

<sup>23</sup> Abdel Wahab El-Affendi, *Turabi's Revolution: Islam and Power in Sudan*[ London: Grey Seal, 1991], pp.57-58

### *i) The Transitional Constitution*

Modern constitutional history of the Sudan started with the adoption of the Self-Government Statute of 1953 as the constitutional charter of the country until December 31, 1955, with further amendments. After the Sudan regained its independence on January 1, 1956, the Self-Government Statute of 1953 has become the country's first transitional constitution of the independent Sudan. However, the transitional constitution that the government of the National Unionist Party (N.U.P.)<sup>24</sup> of the Sudan had implemented immediately following its independence was secular and liberal.<sup>25</sup> Article 113 of the Transitional Constitution of the Sudan expressly retained the laws of the Sudan as they previously existed under the Condominium. After the independence different options were held as to the form of system which should be adopted ranging from the advocates of the application of the *Shari'ah* law, the application of the Egyptian law, and the application of English law.<sup>26</sup> The main political parties were expected to frame and adopt a permanent constitution soon after independence.

In 1957, a year after independence, the *Ummah* Party and the *Khatamiyyah* sect issued a joint statement in which they called for the Sudan to develop an Islamic parliamentary republic, with the *Shari'ah* serving as the sole source of legislation. The first Prime Minister, Ismail al-Azhari, who ruled from 1956 to 1958, declared that Sudan would be made an Islamic republic through the parliament. In September 1956 a National Committee for drafting the constitution was established by the Council of Ministers. It was composed of 44 members who represented all the political parties in the country and was presided over by the Speaker of the House of Representative, Babiker 'Awadallah.<sup>27</sup>

In April, 1958, The Committee presented a draft of 'permanent constitution' to the Constituent Assembly which, however, was not able to discuss it due to the political controversy around the American Aid and other issues. However, with the abrupt termination of the Parliament by the first *coup d'etat* led by the Commander of the Sudanese army, Lt. General Ibrahim 'Abbud in November 17, 1958, the transitional constitution was suspended until the October Revolution of 1964.<sup>28</sup>

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<sup>24</sup> The National Unionist Party (NUP) was formed in 1952. However, the first parties to be formed were the Unionists (*Ittihadiyyun*) and Nationalists (*Qawmiyyun*) both in 1944. Both parties called for the abrogation of the Condominium and the establishment of 'a free democratic government' in the Sudan. The same year witnessed the foundation of 'Ashiqqa' party and a year later the *Ummah* party was established. Being minority parties, both the *Ittidadiyyun* and *Qawmiyyun* were eventually absorbed in the main stream 'Ashiqa' and the *Ummah* respectively (representing the *Ansar*). In July 1952 the Unionist parties (*Ittihadiyyun*) came together under the NUP.

<sup>25</sup> Abdullah Ahmad An-Na'im, "Constitutional Discourse and the Civil War in the Sudan", in M.W.Daly and Ahmad Alawad Sikalinga, eds. *Civil War in the Sudan* [London: British Academic Press, 1993], p.100; Alexander R. Cudsi, "Islam and Politics in the Sudan," in James P. Piscatori, ed., *Islam in the Political Process*, p.38.

Safya Safwat, "Islamic Laws in the Sudan.. ." p.240

<sup>27</sup> *Report of the Technical Committee for Constitution (in Arabic)*, Khartoum: Government Press, January, 1957.

<sup>28</sup> Yusuf Fadl Hasan, "The Sudanese Revolution of October 1964" *The Journal of Modern African Studies*, Vol.5., No.4 [1967], pp.491-509.

The significance of the Revolution of 1964 in the modern political history of Sudan, according to Peter K.Bechtold, was that:

*“it brought two important new forces with new ideas onto the country’s political scene: an alliance of professionals enchanted with the influence of traditional tribal and sectarian leaders and the public emergence of non-centric movement-the Muslim Brotherhood, whose political organization then called itself the Islamic Charter Front ( I.C.F. ), an alliance of the Brotherhood activists with some ‘ulama, a few sufi figures and revivalist groups such as the Wababis- inclined AnsÉr al-Sunnah, and the Communist Party of Sudan ( C.P.S.)”.*<sup>29</sup>

The parliamentary era of the 1960s witnessed the issue of an Islamic constitution was assuming greater prominence than it had in the 1950s. After the Revolution of 1964, various unresolved political questions raised at the time of independence were subjected to fresh examination in the light of the new Sudanese democracy. The National Committee to establish a Constitution recommended that the constitution be derived from the principles and spirit of Islam, and that the *Shari’ah* be the basis of all legislation.<sup>30</sup> Subsequently, the transitional constitution was amended and reintroduced for a period required to draft and enact the ‘permanent’ constitution. The revolution revived with greater vigor all the ideas which had emerged following independence. New parties appeared<sup>31</sup>, including the Islamic Charter Frond (I.C.F) which proposed a draft of an Islamic constitution in 1967-1968.

## ***ii) Proposal for an Islamic Constitution***

As in the 1956 a National Committee for the Constitution of 44 members was elected by the Constituent Assembly during the government of al-Siddiq al-Mahdi ( who had come to office in June 1966 )<sup>32</sup>. The Constitution Committee which was headed by the Speaker of the Assembly Mubarak Shadad, held its inaugural meeting on February 12, 1967. Whereas another Associate Technical Committee of Constitutional studies was formed with Muhammad Ibrahim Khalil as its chairman and Hassan al-Turabi as secretary. The Technical Committee conducted its first meeting on February 22, 1967. After a series of studies and discussions the technical Committee proposed three options for a possible constitution:

- a) A full Islamic constitution totally committed to the *Shari’ah* and its various obligations,
- b) A constitution with an Islamic orientation, that is, one in which there is a general

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<sup>29</sup> Peter K.Bechtold, “ More Turbulence in Sudan: A New Politics this Time?,” *Middle East Journal*, Vol. 44, No.4 [1990], p. 582.

<sup>30</sup> Carolyn-Lobban, “*Islamization in Sudan....*,”p.618; John O.Voll, “*The Evolution of Islamic Fundamentalism....*,”p.133.

<sup>31</sup> In October the Front of the Professionals united with the Nationalist Front ( a composition of the main political parties of the North: the *Ummah* Party and National Unionist Party (NUP), Peoples Democratic Party( PDP ), Sudanese Communist Party, and the Muslim Brothers who were later had reorganized themselves under the ICF in the United Nationalist Front.

<sup>32</sup> Sayyid al-Siddiq ‘Abd al-Rahman al-Mahdi succeeded his father in the leadership of the *Ansar* while retaining the presidency of the *Ummah* party after the latter’s death in 1959.

tendency towards Islam but which is not strictly constructed on the tenets of Islamic *shari'ah* and jurisprudence.

- c) A non-religious or secular constitution, that is, one in which the state would neither have an official religion nor would it meddle in the religious affairs of its citizens.<sup>33</sup>

The first option was proposed by the Islamic Charter Front ( ICF ); the second by the National Unionist Party ( NUP ) and the third by the Southern representatives. The National Committee endorsed the second option of the NUP and ruled that the ‘Sudanese Constitution should be derived from the principle and the spirit of Islam.’<sup>34</sup> The National Committee submitted a proposal for the Permanent Constitution to the Constituent Assembly on January 15, 1968 after a year of deliberations. In the whole text of the draft constitution, Islamic provisions were as follows:

#### Draft Constitution: Chapter One

- (1) The Constitution of the Sudan shall be derived from the principles and spirit of Islam;
- (2) The Sudan is a Democratic Socialist Republic that shall be guided by Islam, and comprises all citizens who live within its geographical boundaries;
- (3) Islam is the official religion of the state, and Arabic its official language;

And Chapter Four,

(113) The Islamic *Shari'ah* shall be the primary source of legislation,

(114) Every legislation passed after the adoption of this constitution in contravention with the provisions of *kitab* and *sunnah*( i.e. *Qur'an* and the Prophet Muhammad authentic tradition ) should be void, provided that such contravention did not in essence previously exist;

( 115) All laws which contravene the provisions of the *kitab* and *sunnah* shall be repealed or amended to the extent necessary to remove the contravention and all unapplied provisions of the *shari'ah* shall be enforced, provided that such repeal, amendment or enforcement shall be gradual according to necessity and subject to the decision of the legislature.

(140) The state shall endeavor to spread religious ( i.e. Islam ) consciousness among citizens and strive to purge society from atheism and all forms of moral corruption and lack of ethics.

Apart from the above clauses, the draft Constitution categorically stipulated a ban on Communism as stated in Chapter three, article no.33 which reads: “all citizen are granted freedom of expression, publication and the press in conformity with the law. No one

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<sup>33</sup> Abdel Salam Sidahmed, *Politics and Islam.....*,”,pp. 101-102.

<sup>34</sup> *Proceedings of the National Committee for the Constitution*, Session No.9, pamphlet No. 1, Khartoum, Government Press; Abdel Salam Sidahmed, *Politics and Islam....*,p.102

citizens, however, either permitted to advocate communism or atheism or to act or advocate a change of the ruling regime either by force, terrorism or any other illegal means".<sup>35</sup>

However, the issue remained unresolved, and the debate about the Islamic constitution was interrupted when the May 1969 *coup d'état* by Colonel Ja'afar al-Numayri took place. Numayri and some junior military colleagues themselves with the mostly leftist professionals from the October Revolution of 1964 ousted the civilian government and established military rule on May 25, 1969.

Prior to May 1969, the political forces in the Sudan had virtually reached a state of polarization in which the left was the coalition of the 'Socialist Forces' (including the Communist Party of Sudan (CPS), the Arab Nationalists and Arab Socialists, and some leftists. The right were the 'Islamic Oriented' forces (the Democratic Unionist Party (DUP), the *Ummah* Party and Islamic Charter Front (ICF)), who as we have noticed, had fortified themselves behind the agenda of an 'Islamic Constitution'. Like other military regime, the immediate problem that face al-Numayri's was that of survival.

As a leader of the military coup al-Numayri declared that one of the primary objectives of the 'May Revolution' was to tear off the 'yellow paper',<sup>36</sup> yet in June 1984, he presented a bill of 'constitutional amendments' to the People's Assembly that amounted to redrafting of the (1973) constitution on 'Islamic grounds'. This drastic change is perhaps due to the abortive Communist coup in July 1971 and suppression of the Communist Party.

Since independence in 1956, the continuity of the Sudan's system of Native Administration introduced by the British has become an important problem. Criticism of this system of tribal administration came largely from educated people who consistently advocated its abolition. In January 1972, a 'Sudanese Socialist Union' (SSU) was launched as the sole political organization in the country i.e., the ruling party. Furthermore an agreement was concluded between government and the rebels in the Southern of Sudan in what came to be known as the Addis Ababa Accord of March 3, 1972.<sup>37</sup> Both Addis Ababa and the new local government were bound together as parts of the new Permanent Constitution which was finally adopted after considerable discussion in the People's National Assembly in 1973. With regard to this agreement Numayri seemed to have adopted a pro-western conservative policy, and subsequently pro-Islamic measures.<sup>38</sup>

Al-Numayri sought to enhance his legitimacy and gain popular support by a self-conscious appeal to Islam. Islam, then, became a more prominent feature in al-Numayri's public statement. Official recognition of Islam was underscored when article 9 of the permanent constitution which was adopted by the people's Assembly in May 1973, recognized Islamic

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<sup>35</sup> *Draft Constitution*, Khartoum, Government Press, 1968., see also, Abdel Salam Sidahmeh, *Politics and Islam.*, p. 102.

<sup>36</sup> This was a clear reference to the project of the Islamic constitution of 1968.

<sup>37</sup> Addis Ababa Accord became the 'Regional Self-government Act for the Southern Provinces of Sudan. Among other things, it called for the grouping of the three Southern provinces into self-governing Southern region with a Peoples' Regional Assembly and High Executive Council or cabinet.

<sup>38</sup> Kamal Othman Salih, "*The Sudan, 1985-1989...*," p. 199.

law and custom as the “main sources of legislation. Personal laws of non-Muslims shall be governed by their personal laws”.<sup>39</sup>

### *iii) Islamic Identity in The 1973 Constitution*

The 1973 constitution established a Presidential system and proclaimed the SSU as the sole political organization of the Sudan. In the case of the South, the 1972 Addis Ababa Accord was enshrined in the constitution ( Article 8 ) stipulating regional autonomy for the South within a unitary Sudan.<sup>40</sup> The question of religion and politics, and how best to reflect it in the constitution was more complicated due to strong pressure from a group of Islamists inside the Assembly who wanted a constitution ‘the enshrined Sudan’s Islamic identity’. After lengthy debates a formula was adopted in the constitution ( Article 16 ) which reads:

- a) In the Democratic Republic of the Sudan, Islam is the religion and society shall be guided by Islam, being the religion of the majority of its people, and the State shall endeavor to express its values;
- b) Christianity is the religion in the Democratic Republic of the Sudan which is professed by a large number of its citizens who are guided by Christianity, and the State shall endeavor to express its values;
- c) Heavenly religions and the noble aspects of spiritual beliefs shall not be abused, or held in contempt;
- d) The State shall treat followers of religions and noble spiritual beliefs without discrimination as to the rights and freedoms guaranteed to them as citizens by this Constitution. The State shall not impose any restrictions on citizens or communities on the grounds of religious faith;
- e) The abuse of religious and noble spiritual beliefs for political exploitation is forbidden. Any act which is intended or is likely to promote hatred, enmity or discord among religious communities shall be contrary to this constitution and punishable by law.<sup>41</sup>

The Sudan path of Islamization under al-Numayri advanced one step further in 1977. Following the National Reconciliation of 1977, President al-Numayri established the Committee for Revision of Sudanese law under the Chairmanship of Hassan al-Turabi.<sup>42</sup> The Committee made up of a number of Sudanese lawyers, including some prominent figures of the Muslim Brotherhood, the Attorney General, with Chief Justice as President. The Committee members also included some Arab lawyers from Egypt, Jordan and Saudi Arabia. The purpose of the formation of the Committee was to bring Sudanese law into

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<sup>39</sup> John L. Esposito, “Sudan’s Islamic Experiment,” p. 187.

<sup>40</sup> ‘Permanent Constitution of the democratic Republic of the Sudan’, *Democratic Republic of the Sudan Gazette*, Khatoum, May 1973.

<sup>41</sup> Ibid.

<sup>42</sup> Hassan al-Turabi, a leader of the Muslim Brotherhood in the Sudan since 1964.

conformity with Islamic *Shari'ah*.<sup>43</sup> As a result, a number of bills, including a ban on alcohol and the institution of zakat were drafted.

Although the work of this committee has little initial success, some of its draft bills were enacted when the application of *Shari'ah* was undertaken in earnest when Numayri announced his plans for Islamization of the Sudanese legal system in 1983. Consequently, a major change took place in the Sudanese legal system by the repeal of several existing laws and the promulgation of Islamic law. However, the Islamization in general and the application of Islamic penal code in particular aroused widespread criticism condemning the arbitrary interpretation and application of *Shari'ah* law in the Sudan.

The opponents of Numayri's Islamization, however, provides no basis for an effective consensus. Southern opponents of the program, the largest among them was the Sudan People's Liberation Movement (S.P.L.M) under the leadership John Garang, and some northern groups, like the Sudan Communist Party (S.C.P.), called for the total abrogation of the "September Laws" and the establishment of an essentially secular state.<sup>44</sup>

At the other end of political spectrum, the National Islamic Front( N.I.F)<sup>45</sup> advocated the continued application of Islamic law and opposed only those aspects of Numayri's Islamization program that are the mistaken products of Numayri's personalized approaches. The Muslim Brotherhood argued that Numayri's program was not authentically Islamic and that a proper program of Islamization would benefit the Sudan. The more traditional political groups centered around the Anwar's *Ummah* Party and the parties associated with the *Khatmiyyah* and the political tradition of Azhari advocated Islamic influence in terms of general principles like consultation rather than a literal application of specific Islamic practices.<sup>46</sup>

Facing the internal critics and rejection which mainly came from the secularists, and the outside pressures, particularly from the U.S.A following the visit to Sudan by Vice-President George Bush in March 1985, influenced Numayri to resort to a risky task of retreating from the path of Islamization. However, while returning from a state visit to Washington, Numayri was deposed by a coup d'etat led by Lieutenant General Abd al-Rahman Siwar al-Dhahab on April 6, 1985.<sup>47</sup>

The new regime enacted the country's third Transitional Constitution in October 1985 which regulated the transition of power to an elected government in April 1986, and was supposed to continue to regulate the conduct of the elected government until a "permanent" constitution could be enacted by the Constitutional Assembly. It was not until May 15, 1988 that a new 'government of national unity' was finally formed. This coalition government was participated by political parties such as the *Ummah* Party, the Democratic Unionist Party

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<sup>43</sup> Abdullah Ahmed al-Na'im, "Constitutionalism and Islamization in the Sudan", *Africa Today*, Vol. 36., Nos 3-4[1989], hlm.17.

<sup>44</sup> John O. Vol, "Sudan After Nimeiry," *Current History*, ( May, 1986 ), pp. 214-215.

<sup>45</sup> The NIF was formed by after alNymayri's fall by the majority faction of the Muslim Brothers led by Hassan al-Turabi.

<sup>46</sup> *Ibid.*,p. 214

<sup>47</sup> Peter K. Bechtld, "More Turbulence in Sudan....." pp. 583

(D.U.P.), the N.I.F., the Nuba-based Sudanese National Party and some southern factions when they had signed a charter of national accord.<sup>48</sup>

The Constitutional Assembly was, however, unsuccessful to produce a permanent constitution. Despite its declared commitment to repeal the Islamic laws of 1983-1984, the elected government of Prime Minister Sadiq al-Mahdi had to move in the direction advocated by the N.I.F since the promise was made by the N.I.F not to oppose the repeal of the 1983 legislation so long as an acceptable substitute could be found. Since the successive governments constituted by Sadiq al-Mahdi, leader of the *Ummah* Party, were so incompetent and corrupt that the army was encouraged to seize power again.<sup>49</sup> Moreover, the worsening security situation in the Sudan helped to pave the way for the military coup *d'état* on June 30, 1989 that replaced Sadiq al-Mahdi's all-party coalition with the Revolution Command Council for National Salvation (R.C.C.-N.S).<sup>50</sup>

Following the overthrow of Numayri's military regime in April 1985, the Muslim Brotherhood reorganized itself into a broader-based political party, the National Islamic Front (N.I.F.), which won third position in parliamentary election. The N.I.F then had considerable influence within the Transitional Military Council (T.M.C.) led by Siwar al-Dhahab, and the cabinet several of whose leading members were sympathizers or supporters. The N.I.F's insistence on preservation of the September 1983 Laws inspired the T.M.C. to extend full support to their cause. Siwar al-Dhahab adhered to the same opinion as Turabi's that the September 1983 Laws should be revised but not abrogated.<sup>51</sup> The N.I.F then appears to be the strongest proponents of an Islamic state based on *Shari'ah*.

The N.I.F, which succeeded the I.C.F, was a large and multifaceted coalition, representing all alliance of diverse forces, ranging from tribal blocs, business and merchant groups, students, women's groups, state employers, various schools of intellectuals, etc., within the Sudan. As such, the N.I.F claims to present a modern alternative to the traditionalist Islam propogated by the *Khatmiyyah* and the *Ansar*, which ultimately aimed at establishing a modern Islamic state which guaranteed the prosperity of the *ummah*.

The June *coup d'état* may be considered as the latest attempt by the Sudanese Islamicists led by Brig. 'Umar Hasan Ahmad al-Bashir, in their struggle towards implementing an Islamic order. Al-Turabi supports al-Bashir's military regime since it served Sudan from abandoning the Islamic path, and it seems the N.I.F has made a great contribution to help the regime to come to power and ensure its Islamic direction. Immediately after taking over the government, the R.C.C.-N.S. appointed a civilian cabinet and issued three 'Constitutional decrees' which implied, among others, the suspension of the 1985 transitional constitution, dissolution of the Constitutional Assembly, the State Council, and the Council of Ministers and vested both executive and legislative authorities in the Revolutionary Command Council (R.C.C.), the head of which acts as a head of the state, prime minister and minister of defense.

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<sup>48</sup> Kamal Osman Salih, "The Sudan, 1985-9: the Fading Democracy," *The Journal of Modern African Studies*, Vol., 28. No. 2 [1990], p.205.

<sup>49</sup> Abdullah Ahmed An-Na'im, "Constitutionalism...", p.22

<sup>50</sup> Kamal Othman Salih, "The Sudan, 1985-9....," p. 221

<sup>51</sup> Gabriel Warburg, "Mahdism and Islamism in Sudan," pp. 229-230.

The second decree banned all political parties, trade unions, and the non-governmental press and information institutions. It also decreed a state emergency under which the new power-holders enjoyed unlimited authority, ranging from arrests, detention, dismissal of public servants, restriction of peoples movements, to market regulation and the confiscation of property. Under the state emergency, opposition to new regime, strikes and political gatherings were considered criminal offences punishable by law.<sup>52</sup> The decrees were signed by Lieutenant-General ‘Umar Hasa Ahmad al-Bashir, the Chairman of the R.C.C.-N.S and new Head of State, who became prime minister, Minister of Defense, and the Commander-in-Chief of the armed forces.<sup>53</sup>

Apparently the new military regime differed greatly from its predecessors in political orientation and style. It had a definite agenda and soon set out to pursue its objectives. They admitted that they did not believe in Western-style liberal democracy which they considered as divisive and dysfunctional in a country like Sudan. Instead they advocated “*ShurÉ*” as a ‘more appropriate form of democracy via citizens.’ As an interim measure, the R.C.C.-N.S. had appointed several committees of thirty to forty advisors each in specialized areas such as economics, social issues, and regional administration.<sup>54</sup>

Evidently, the Islamic agenda has been pursued farther in Sudan than in many of the better-known examples of contemporary Islamic republics with respect to Islamization of law and application of the *hudud* penalties.<sup>55</sup> Initially al-Bashir adopted a cautious policy regarding the implementation of the *Shari‘ah* laws in Sudan. As he declared: “implementation of Islamic *Shari‘ah* will be done with caution and on the basis of Islamic patience and Islamic justice as well as individual and social rights.”<sup>56</sup> In line with the commitment of al-Bashi’s regime to Islamic path, the enforcement of *hudud* law was resumed on 31 December 1990 after its suspension following the overthrow of Numayri’s regime in April 1985.

It can thus be generally inferred that in the course of creation of an Islamic order in the Sudan, the contribution of the N.I.F. under the leadership of Hasan al-Turabi, particularly, in the latest stage of its development, is substantial. Al-Turabi may be considered as an architect of modern revival of the *Shari‘ah* law system to regain its root in Sudan. In al-Turabi’s words of his major task in Sudan:

*“It is to Islamise public life-civil, business, police, military, economy and culture in all dimensions. When I say ‘Islamise’ I mean not only in forms, according to Islamic Shari‘ah, but also attitude and disposition...Madinah is our model.”*<sup>57</sup>

Basically, the Islamists have no objection to the use of democracy but it must be abide by the principle of consultation (*ShurÉ*). According to Al-Turabi’s, *ShurÉ* is obligatory not advisory

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<sup>52</sup> Abdel Salam Sidahmed, *Politics and Islam in Contemporary Sudan*, Great Britan: Curzon, 1997, p. 188.

<sup>53</sup> Kamal Osman Salih, “The Sudan, 1985-9.....,” pp.221-222.

<sup>54</sup> Peter K. Bechtold, “More Turbulence in Sudan.....,” pp. 583-593.

<sup>55</sup> Carolyn Fluehr-Lobban, “Islamization in Sudan.....,” p. 623.

<sup>56</sup> Cited in Yahya Fozi, “Sudan and Islam: From al-Mahdi to al-Bashir,” *Echo of Islam* [Juay, 1992], p.20

<sup>57</sup> Hasan Abdullah al-Turabi, “Challenging Times but Madinah is Our Model,” *Impact International*, Vol. 23. Nos. 3 & 4 [ 12<sup>th</sup> February-11<sup>th</sup> March, 1993], p. 9.

as held by the elitist, and it should be realized into a parliament elected freely by the Muslims. Its being obligatory is derived from *ijma'*,<sup>58</sup> the consensus of opinion (*ijmÉ'*) among the Muslim jurists (*fuqahÉ'-mujtahidĒn*) that does not contradict with a scriptural authority or authority which is to be represented by a constitutional council empowered to invalidate any law contrary to Islam.

The superiority of *shurÉ'* over Western democracy lies in its dependence on the ultimate sovereignty of God and hence does not suffer from shortcomings of human reason. In the proposed federal state of Sudan, non-Muslim regions would be allowed to opt out of the Islamic legal system, as al-Turabi argued, because the Shari'ah is closer to any other legal system compared to the African cultural heritage. Thus, al-Turabi dismissed the outcry against the *Shari'ah* as emanating from the West, which sought thereby to isolate Sudan from its neighbors and Muslim world. He also asserted that Garang's demand to abolish Islamic laws had nothing to do with religion and was based on pure Marxist principles.<sup>59</sup>

## V. Conclusion

Viewed from historical trend in the process of establishing an Islamic constitutional order in Sudan, G.R. Warburg says that Islam has deep roots in the culture of the people and it constitutes a major factor that has to be reckoned with in formulating the policy of the country. With the attainment of independence, an indigenous course has been charted, one which has steadily moved toward the identification of the Sudan as an Islamic Republic to be governed by the principles of the *Shari'ah*.<sup>60</sup>

Since the three major currents of the Ansar, Khatmiyyah, and the Muslim Brotherhood, which comprise the major forces on the contemporary Sudanese political scene, are religiously based, Sudan's political history has been, to some extent, colored by Islam, and the implementation of Islamic laws is, therefore, a main idea of the Sudanese people. The pursuit of this course appears to be improving but to pass its transitional stage will definitely depend on the balance of forces yet to be resolved between, on the one hand, the Islamists and on the other, the liberal-modernists and secularists, particularly in the dominant Muslim and minority non-Muslim areas of the Sudan.

The Muslims' struggle for Islamic constitutionalism has been wrongly conceived in terms of the myth of anti-modern and anti-West. On the contrary, analysis from inside Islamic tradition perceives such kind of constitutional movement as a natural corollary to the demand of faith in God. In its encounters with other civilizations, Islam seeks to have synthesis operating within the restraints of its principles and guided by its spirit. The core issue in Islamizing societies is implementation of the *Shari'ah* law either as source or the sources of law. The immediate practical problem remains in the path of Islamic constitution-making which directly entails Islamization of entire legal system.

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<sup>58</sup> *Ijma'* means consensus of opinion among the Muslim jurists (*fuqahÉ'-mujtahidĒn*) on any matters or issues in any specific place and time.

<sup>59</sup> Gabriel R. Warburg, "The Shari'a in Sudan: Implementation and Repercussions, 1983-1989," *Middle East Journal*, Vol. 44., No. 4 [1990 ], p. 634.

<sup>60</sup> Carolyn Fluehr-Lobban, "Shari'ah Law.....," p.77.

The question may be raised concerning a vast corpus of Western-based laws that has been accumulated in the Muslim countries over the long period of time. It should be stated that not all legal codes that have been formulated on the basis of Western models are rejected. The parameters of acceptance and rejection of them rest upon the extent of contradictory nature of those codes to the principles of Islamic laws. After all, those non-Islamic origins of the codes may be utilized as secondary sources in the same manner as customary laws. It must be admitted, however, that the path to an Islamic constitutional government is not literally a question of producing proper constitutional provisions. In effect, the accomplishment of the Islamic provisions of the constitution depends mainly on the right leadership and necessary infrastructure that run the administration of the state.

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