

The Islamic Country Nigeria Borrows on Riba: Introducing Esham as an Instrument of Borrowing

Oluwaseun S. Saidu¹, Murat Cizakca², Syed Othman Alhabshi³

Abstract

The Nigerian government continues to adopt conventional financial instruments of government borrowing. The use of these instruments both in the past and in the present has not yielded the desired results as it continues to wallow in debt with little or no development to show for it. This borrowing escapade by the government would not have been problematic if Nigeria were a religiously neutral state. However, Nigeria is home to over a hundred million Muslims and her constitution guarantees freedom of religion whilst she regularly sponsors pilgrimages to the haramain and sharafain every year. It is therefore visible to the blind and audible to the deaf that Nigeria is an Islamic country and therefore should use Islamic instruments of borrowing. The objective of this paper is to highlight the abhorrent use of non-Islamic means of borrowing by the Nigerian Government and to introduce a relatively new instrument of borrowing for use within the Nigerian state. The benefit of using an Islamic means of borrowing therefore becomes evident in that, the overarching maqsad of the shari'ah being obedience to Allah, blessings from the heavens and the earth will naturally trickle in (The Qur'an, 7: 96) This is notwithstanding the concomitant pragmatic and pecuniary benefits associated with non-usurious transactions. Methodically, the paper adopts legal reasoning, scriptural reasoning, constitutional analysis and public evidence.

Keywords: Public Borrowing, Riba, Islamic Country, Esham, Sukuk, Instrument of Borrowing.

Introduction

Public borrowing is rife in Nigeria just as it is rife in most countries of the world. What makes the Nigerian state peculiar is that she is home to over a hundred million Muslims, she is a member of notable international Islamic multilateral and

¹ Professor of Interest-Free Finance IBFI and Director Servitude Centre, UK.

mao@servitudेंcentre.org

² Professor of Comparative Economic History and Islamic Finance, KTO Karatay Universiti, Konya.

³ Professor of Islamic Economics, Econometrics and Takaful and Deputy President Academic, INCEIF.

financial institutions and her laws guarantee freedom of religion, association and worship. Yet, the country “chooses” to steer its public finance through riba-based sources. These are unislamic ways which do not necessarily sit well with the social structures and sensibilities of the country. However, there are bona fide Islamic ways of orchestrating public borrowing the country can avail. This is what the paper seeks to expound and bring the attention of the government to. It is instructive to note that whilst Sukuk has been used in the country for some form of public borrowing, it is fraught with some controversial permissibility issues under the Islamic Shari’ah. Against this backdrop, the paper elucidates on the “Islamicity” of Nigeria as a country, gives an account of the current state of riba-based borrowing in the country, sheds light on the current state of “Islamic” borrowing in the country, highlights the problem with sukuk and finally introduces Esham as an alternative non-usurious means of public borrowing. The paper concludes with ways forward to implementing the Esham model in the country.

The Country Nigeria: Is it Islamic?

Nigeria’s religious identity is a vexed one. Its elusiveness has been further pronounced since the country started using the 1999 constitution as its Grund norm. Even though the use of a Grund norm questions the very basis of her Islamicity, vehement and passionate discussions have been made as to whether she passes as a religiously neutral state, a secular state or multireligious (Saidu, 2018a; Saidu, 2024a). Section 10 of the constitution makes a pronouncement on this issue when it says “The Government of the Federation or a State shall not adopt any religion as State Religion”. While this section appears to clarify the debate, there is more than meets the eye, as its interpretation is subject to multiple understandings as well as knowledge debt of the Nigerian pundits and jurists. (Saidu, 2018b; Saidu, 2024b).

Some jurists have put forward the position that section 10 indicates that Nigeria is a secular country. Drawing a corollary from a somewhat similar provision in the first Amendment of the American constitution declaring “to make no law respecting the establishment of religion”, they conclude on the secularity of Nigeria via a very literalist view arguing that section 10 appears to more assertive in its prescription of secularity. This conclusion is fallacious as it presupposes or assumes that the United States of America is a secular country. The conclusion also implicitly draws from a comparison of the similarity in the presidential system practiced by both countries (Saidu, 2018a; Saidu, 2024a). Thoughtfully, a group of legal juggernauts have questioned the “legal secularists” on which secularism was intended in the Nigerian constitution if we do some contradistinction with other so-called secular countries such as India, England, America where Hinduism, the Anglican Church and the lack of discrimination against any religions are invariably part of the polity respectively. (Saidu, 2018b; Saidu, 2024b). The operationalization of the Islamic law

in some Nigerian northern states as implementable law of the state championed by their Governors was indeed a straw that broke the camels of the legal secularists. Such states and their governors find authority or credence for their action under the same section 10 of the 1999 constitution. (Saidu, 2018a; Saidu, 2024a). Even though the legality of the actions of the governor has been questioned under the Nigerian federation, there has been no vehement rejection or reprimand by the federal government thereby somewhat sanctioning the actions of those states under the constitution. (Saidu et al., 2021a).

It is therefore the view of the authors that secularism was not what was intended by the constitution, if it were so, this would have been abundantly clear, rather, what was intended is that no religion can be adopted by the country as superior and as a state policy but that religion does have a place in the national discourse and polity (Saidu, 2018a; Saidu, 2024a). A profound support for this line of thought is found in the various religious undertakings in Nigeria where state funded places of worship are replete around the country including the government house which are budgeted for in the annual budget of the federal and state governments. The observance of religiously linked public holidays, the setting aside of Sunday as work free day in line with the Sabbath in the gospels, the allocation of time for congregational Friday prayers for the Muslims, the expending of state resources for hajj and Christian pilgrimage including the establishing and running of pilgrimage boards by the government and the funding and support of school as well as seminaries that promote particular faiths cum ideologies by the government are equally outstanding supports for the authors line of reasoning (Saidu, 2018a; Saidu, 2024a).

Buttressing the important place of religion in the country is the degree of sensitivity it generates when one religion tries to institutionalize any beneficial concern. Such gestures are viewed as a decoy to put that religion over the other religion. This usually happened between the Muslims and the Christians. It is usually the case that the Christians accuse the Muslims of trying to Islamize the country. A case in point is the institutionalization of Islamic finance which was met with stiff opposition by the Christian elites who saw it as an imposition of Islamic religious values. (Saidu, 2018a; Saidu, 2024a).

Notwithstanding the above contentions and religious identity tussle a, Nigeria passes as a bona fide Islamic country. It is indeed a member of the OIC and a major contributor and shareholder in the Islamic Development Bank. Cementing the argument is its teeming over 100 million adherents to the Islamic faith who yearn for Islamic applications in their day-to-day life including their financial representation which also includes government public borrowing. Next, we examine the current spate of conventional borrowing in the country.

The Current State of Borrowing in Nigeria

It is instructive to note that, despite the colossal resources at the disposal of the government, Nigeria still borrows on a large scale to augment its budget deficit every year. This has been linked to kleptocratic manifestations cum culture amongst the ruling elites. This culture has now permeated and trickled down to every facet of public and private life.

As of June 30, 2023, Nigeria's total public debt stock stands at over ₦48 trillion (domestic debt) and \$43 billion (external debt), amounting to a combined total of approximately \$87 million (DMO, 2024). This debt profile is dominated by interest-bearing instruments, which contravene Islamic principles prohibiting *riba* (usury).

Table 1: Nigeria's Current Riba Debt Profile

Debt Instrument	Amount (₦ Trillion)	Key Features	Shari'ah Compliance
Treasury Bills	5.2	Short-term (91–364 days), interest-based, used for liquidity management.	Non-compliant
Federal Government Bonds	25.8	Medium to long-term (5–20 years), fixed/variable interest rates.	Non-compliant
Promissory Notes	3.1	Interest-bearing, issued to settle contractual obligations.	Non-compliant
Green Bonds	0.5	Interest-based, earmarked for environmental projects.	Non-compliant
Savings Bonds	0.3	Retail-focused, fixed interest payments.	Non-compliant
Sukuk (Ijara)	0.7	Asset-backed, profit-sharing (though controversial per Shari'ah).	Partially compliant

Source: Author's Computation from DMO, Nigeria

The reliance on these instruments has led to a debt crisis characterized by; compound interest burdens, currency and interest rate risks, exacerbating fiscal instability and the misallocation of funds, with borrowed resources often diverted from productive investments. On the interest burdens, as highlighted by former President Obasanjo, who noted that Nigeria repaid \$16 billion on a \$5 billion loan yet still owed \$28 billion due to Interest accumulation. In 2000, when speaking about Nigeria's rising debt to international creditors, the former President was quoted as saying: "All that we had borrowed up to 1985 was roughly US\$5 billion, and we have paid nearly US\$16 billion. Despite this, we are nevertheless told that we owe around US\$28 billion. This arose due to the disparity in interest rates between domestic and foreign creditors. Compound interest is the worst thing in the world, in my opinion." This is in line with the Islamic principle of Shari'ah that greatly abhors and discourages debt and Riba. Fast forward 2024, despite the part-payment conditioned debt forgiveness granted to Nigeria in April 21, 2006 to the tune of 30 billion dollars, Nigeria's external debt stock as at June 30, 2023, is over 43 million USD (DMO, 2024).

Looking at the debt history of Nigeria since independence, it may not be out of place to conclusively say that debt is not the answer to Nigeria's numerous economic problems. In, fact, Nigeria's total debt stock has been a subject of concern and scrutiny due to its consistent rise over the years. The country's total debt stock is the cumulative amount of both external and domestic debts owed by the government at a particular time. The composition of Nigeria's debt includes both external debt, which refers to funds borrowed from foreign sources like international financial institutions, foreign governments, or commercial creditors (this includes the International Monetary Fund, the World Bank, the African Development Bank, and other Bilateral and commercial instruments); and domestic debt, which comprises funds borrowed from within the country, often through the issuance of government bonds, treasury bills, and other financial instruments respectively.

From the foregoing, it is easy to see that financial instruments play a distinctive role in the Nigerian financial landscape. The ribawi financial instruments used by the Nigerian government include; promissory notes, green bonds, savings bonds, treasury bills, bonds, sukuk¹. These financial instruments reflect the diverse tools used by the Nigerian government to raise capital, manage its finances, fund projects, and provide investment opportunities for individuals and institutions. They cater to different investor preferences, government wants not needs, risk profiles, and financial goals while "contributing" to the country's economic growth and

¹ It should be noted that Sukuk are not really bonds per se. In fact, they share hybrid features of both equity and debt.

development. They therefore help us in comprehensively understanding the current state of borrowing in Nigeria.

Islam discourages excessive debt, as evidenced by prophetic traditions warning against the spiritual and societal harms of riba. For Nigeria, a country with a significant Muslim population, transitioning to Shari'ah-compliant instruments is not just economically prudent but also a moral imperative.

The State of Islamic Borrowing in Nigeria

Islam frowns a lot on borrowing, especially when not in dire need. It was narrated on the authority of Abu Huraira that; Whenever a dead man in debt was brought to Allah's Apostle (PBUH) he would ask, "Has he left anything to repay his debt?" If he was informed that he had left something to repay his debts, he would offer his funeral prayer, otherwise, he would tell the Muslims to offer their friend's funeral prayer. When Allah made the Muslim Ummah wealthy through conquests, He (the leader of the Ummah PBUH) said, "I am more rightful than other believers to be the guardian of the believers, so if a Muslim dies while in debt, I am responsible for the repayment of his debt, and whoever leaves wealth (after his death) it will belong to his heirs." (Sahih al-Bukhari 2298, Book of Kafalah: Book 39, Hadith no. 9)

It was also narrated by Abu Huraira, that the Prophet said: "the soul of a believer is held hostage by his debt in his grave until it is paid off." (Jami` at-Tirmidhi 1078 Book of Jana`iz : Book 10, Hadith 114). Similarly, it was narrated from Thawban, the freed slave of the Messenger of Allah (PBUH), that the Messenger of Allah (PBUH) said "Anyone whose soul leaves his body and he is free of three things, will enter Paradise: Arrogance, stealing from the spoils of war, and debt." (Sunan Ibn Majah 2412: Chapter of Charity, Book of Stern Warning Concerning Debt 15, Hadith 24)¹. This shows the significant implication of living one's life in debt as an individual, which by extension also affects the society that decides to run its affairs on debt as the hadith Narrated by Ma'qil shows wherein he said; I heard the Prophet (PBUH) saying, "Any man whom Allah has given the authority of ruling some people and he does not look after them in an honest manner, will never feel even the smell of Paradise." (Sahih al-Bukhari: Chapter of the; Book of Judgements, 93, Hadith 14). Honest, here would mean seeking to better their lots including being prudent with ALLAH-given resources and avoiding unnecessary debts, spending, excessive "squandermania" which invariably leads to debt overhang on the people and the country at large. It is worth reiterating that the evils of debt are not peculiar to individuals alone but extend to a society that lives in debt as individuals are a

¹ Similar narrations exist in Sunan Ibn Majah 2413: Chapter of Charity, Book of Stern Warning Concerning Debt 15, Hadith 24

microcosm of the larger society. This is the main reason why Islam encourages trade and production and eschews wastages cum wasteful practices.

On the other hand, the authors concede that debt is Islamically legal. Although debt is legal, Muslims and Muslim countries are subject to several restrictions. The Sukuk is about the only main endeavour by the government of Nigeria to borrow Islamically. In other words, Nigeria's foray into Islamic finance has been limited, with Sukuk being the primary instrument employed. Like many countries, the Nigerian government floated her sovereign sukuk within the last decade. Before this, a state government within the federalism of Nigeria launched Sukuk i.e. the Osun State Sukuk in 2013. The Osun Sukuk was 20% oversubscribed. The rationale for floating these sukuk is to deliver developmental projects to the people of Nigeria.

Since 2017, the federal government has issued sovereign Sukuk (totaling ₦742 billion as of 2023) to fund infrastructure projects like roads and bridges. These Sukuk adopt the *Ijara* (lease) structure, where investors receive profits from asset rentals rather than interest. Some of the key achievements in this space include the fact that; the Sukuk market has seen oversubscription (e.g., 105% for the 2017 issuance), reflecting strong investor demand, the Securities and Exchange Commission (SEC) has developed a master plan to expand the Islamic capital market, including the Lotus Islamic Index for shari'ah-compliant equities. On the other hand, some of the challenges include; legal and shari'ah concerns bordering on the use of LIBOR for profit calculations and the reliance on Special Purpose Vehicles (SPVs), mirroring conventional bonds, raising doubts about compliance; scholars' critique of the *Ijara Sukuk* for resembling the Ottoman *cash waqf*, which has been criticized for being covert *riba* and market limitations of a lack of a secondary market for Sukuk reducing liquidity. Minimal public awareness and regulatory hurdles hinder growth and are therefore part of the challenges.

While the adoption of Sukuk demonstrates Nigeria's potential to embrace Islamic finance, it is important to highlight that central to all the Sovereign *Sukuk* that has been issued in Nigeria so far, is that they all have employed the structure of *Ijarah*. This of course has serious Islamic legal issues as we will see in the next exposition. However, alternatives like Esham could address these gaps more effectively.

The Problem with Sukuk

For the deeply discerning, it is easy to see that every sukuk has two elements:

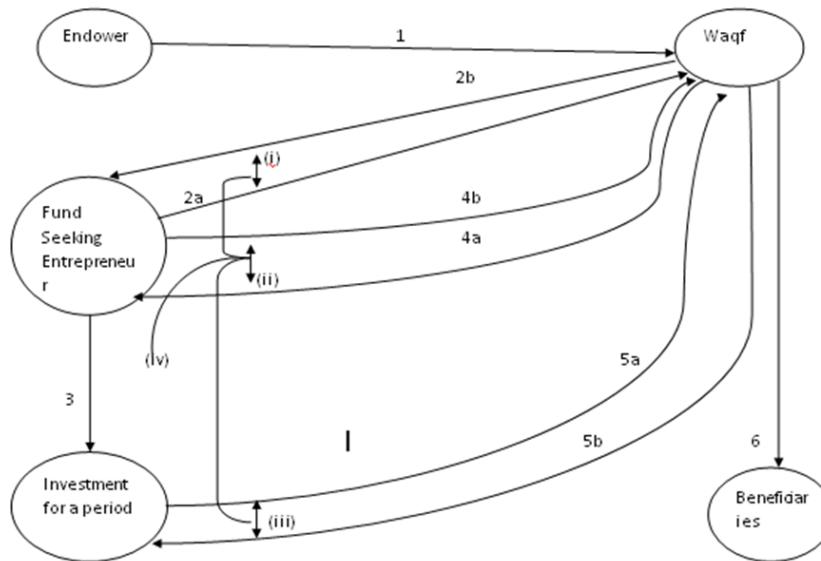
1. Revenue generation from an asset and 2. Its "asset-based" securitization (Saidu, 2019). To fully comprehend the problem with sukuk, it is pertinent to examine the first fundamental element of a Sukuk which is, revenue generation from an asset, and

this can be best understood by looking at a fundamental Islamic financial institution called Waqf. In this respect, we look specifically at the cash waqf which more or less represents the origins of modern (ijara) sukuk (Cizakca, 2011; Saidu, 2019).

Waqfs could be made up of varying corpuses. However, one which is dominated by cash is a Cash Waqf. Such a corpus is then invested and its proceeds are used to fulfill the objectives of the waqf. (Saidu, 2019). Describing the Ottoman variety, a man of means donates his fortunes to a specified cause through official channels. Such monies are then invested for in the interest of the waqf by way of Istiglal, a lease-buyback arrangement in today's context. An interested entrepreneur who seeks working capital will give up the usufruct of his property in order to take advantage of the investible funds from the waqf. (Saidu, 2019). The agreement between the entrepreneur who will now invest the money usually spans a year or an agreed period of time (Saidu et al., 2021a). Ample avenue then exists for the entrepreneur to reuse the "mortgaged" property for a fee whilst still being in possession of the waqf capital. At the end, the entrepreneur regains full ownership of his property when he reimburses the waqf capital hitherto obtained within the stipulated time period (Saidu et al., 2021a).

As a result of the replication of the above arrangement with other deficit units as participants, the waqf becomes immensely profitable and thus fulfills its purpose as well as the endower's noble purposes. Of course, and overheads such as administrative fees and other expenses directly related to the functioning of the waqfs are deducted before funds are allocated to waqf beneficiaries. It was the case that the above-described arrangement enabled the sustainability of the waqf, its corpus and even ensured continuity of the waqf if excess waqf profit are ploughed back to enhance waqf capital cum corpus.

Cash Waqf Key: 1-Corpus (Cash);2a- Property (Ownership rights);2b- Cash (Investment capital);3- Cash;4a- Transfer of Usufruct right on property;4b- Rent from Usufruct for a specified period;5a- Cash (Corpus returned);5b- Ownership rights returned;6- Enhanced Waqf subject to management decision to plough back profit or disbursement to waqf purposes less waqf overhead or running cost; i- Sale; ii- Lease; iii- Buyback; iv- Istiglal.

Figure 4: A Classical Ottoman Cash Waqf: Source; Saidu, (2019)

However fanciful and interesting the Ottoman cash *Waqf* appeared, it was heavily criticized. Some of the criticisms include ; that the “erosion” of the capital through investment was tantamount to tampering with ALLAH’s property, that Istiglal adoption infringes on the right of the waqif to revoke¹, that it runs against the grains of the Islamic law of Inheritance as it tries to circumvent it, that the waqf funds invested was invested in usurious financial instruments including the “notorious” Bay al-Inah (Saidu, 2019; Saidu et al., 2021a). Sultan Murat the 3rd who held sway in the Ottoman Empire at the time sanctioned the cash waqf and thus laid to rest the age long debate. (Cizakca, 2011; Saidu, 2019; Saidu, 2021b).

The crux of the matter is that the cash waqf workings as described above is very analogous to the present day sukuk workings. This could be easily seen in the presence of the Istiglal mechanism in the SPV that the Sukuk heavily relies on. In other words, the SPV element based on the Istiglal is quite similar to the Ottoman variant of the cash waqf (Cizakca, 2011; Saidu, 2019). Of course, the use of Istiglal for Islamic investing has been declared impermissible chiefly owing to its striking similarity with the bond in the face of covert usurious transaction (OIC, 2014). This is notwithstanding the sanctioning of its use as an integral part of the Sukuk al-ijara

¹ This is a Maliki Madhab opinion and not necessarily the position of the majority especially when a panoramic view of the Quran and Sunnah is taken,

by the AAOIFI. The implication of this for the (ijara) Sukuk is damning. It questions the very foundations for its applications as a permissible and non-usurious instrument of borrowing making it at best a suspect form of Islamic borrowing (Saidu, 2018a; Saidu, 2024a).

Introducing Esham as An Instrument of Borrowing for Nigeria

Esham, a historical Ottoman instrument, offers a riba-free, risk-sharing alternative for public borrowing. Modernized by Çizakça (2014) and popularised by Saidu, (2018a, 2024a), Esham¹ operates as follows:

Key Features:

1. Asset-Backed Revenue Sharing:
 - The government allocates revenue from public assets (e.g., toll roads, taxes) into shares (Sehm).
 - Investors buy shares and receive fixed annuities proportional to revenue, not interest.
2. Flexible Redemption:
 - The borrower (government) decides when to repay principal, avoiding rigid maturity dates.
 - Investors retain the right to sell shares in secondary markets.
3. Risk-Sharing:
 - Returns fluctuate with asset performance, aligning with Islamic finance principles.
 - No third-party guarantees are needed, reducing complexity.

Some of the advantages for Nigeria include its Shari'ah Compliance as Esham avoids riba and gharar (excessive uncertainty) by linking returns to real assets and shared risk. Its fiscal sustainability in that perpetual Esham (no redemption) can fund long-term projects without debt overhang. Also, its demographic fit is Ideal for Nigeria's young population seeking retirement or inheritance planning tools. Implementation wise, the way to go will be to enact an Esham Market Act to create a regulatory framework. Replacing LIBOR with a Shari'ah-compliant benchmark (e.g., asset-linked yields) will add more shari'ah credibility. Finally partnering with Islamic rating agencies might help ensure compliance.

¹ The authors are currently elaborating and finetuning Esham for use in different countries. This is subject of an article currently being prepared. The article expands on the nitty-gritty of Esham.

Concluding Remarks

By and large, the article has shed light on the unwholesome practice of an Islamic state, Nigeria borrowing on *riba*. The authors contend that the country is an Islamic one with all indices such as population, demography, international bilateral and financial membership, and domestic constitutional backing pointing towards her Islamic identity. The authors further establish the precarious state of public borrowing in the country most of which are *riba* based and noted that the seemingly minuscule share of Islamic borrowing in the country's borrowing mix, chiefly *Sukuk*, is problematic. They then suggest *Esham* as a viable *riba-free* alternative to entrenched public borrowing in Nigeria.

It is therefore safe to conclude that Nigeria's reliance on *riba*-based borrowing is economically unsustainable and religiously incongruent for an Islamic-leaning nation. While *Sukuk* represents progress, its structural flaws necessitate alternatives like *Esham*, which aligns with *Shari'ah* principles and offers fiscal flexibility. To adopt *Esham*, Nigeria must:

- **Legislate:** Establish clear laws for *Esham* issuance and trading.
- **Educate:** Build public and institutional awareness.
- **Innovate:** Develop localized benchmarks to replace interest-based pricing.

By embracing *Esham*, Nigeria can pioneer a sovereign Islamic finance model that balances economic growth with ethical finance, setting a precedent for Muslim-majority nations globally.

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