

A REFLECTION ON THE SOCIO-LEGAL PERSPECTIVES OF ISLAMIC BANKING IN NIGERIA

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ABSTRACT

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The introduction of Islamic banking model into the Nigeria banking sector by the Central Bank of Nigeria had generated a lot of controversies and will continue to be a source of concern for a very long time. The grouse of people at the time material was due to the close linkage between Islamic banking practice and the Islamic religion ethical value on charging of interest in financial transactions. The argument of people, in reaction to Islamic banking, among others was that it is a clever attempt to Islamise the country. This position appeared justified due to utterances from Muslim Scholars, Clerics and coupled with sudden incursion of Boko Haram in the Northern part of Nigeria. With deep reflection on the close relationship between Islamic banking system and Islamic religion and perceptions of traditional as well as Christian religions on charging interest in financial transactions; this paper examines various issues raised by people consequent to the introduction of Islamic banking into the Nigerian banking sector. To shed light on the practices of Islamic banking, the paper discusses the evolution and various principles characterising Islamic banking system, the challenges and prospects inherent in the system, the statutory and constitutional frameworks for the operation of the system in Nigeria. To justify the introduction of Islamic banking in Nigeria, the paper highlights positions of Christian and traditional religions on charging of

interest in financial transactions. In conclusion, the paper advocates mutual understanding for the continued existence of Islamic Banking model in Nigeria.

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INTRODUCTION

The word ‘bank’ or ‘banker’ has no universally acceptable definition. In the past, a deposit taker was considered to be a money lender since there was no distinction between the two. This is so, because a deposit taker could equally engage in money lending business without necessarily registering under Money Lenders Act, 1900 (Ajayi, 1999). The only difference between a bank and money lender is that a bank is not subject to the provisions of Money Lenders Act. The word ‘bank’ according to *Encarta Dictionary* (Microsoft Online, 1999), is ‘a business that keeps money for individual people or companies, exchange currencies, makes loans, and offers other financial services’. The nature of banking businesses is captured in section 2 of the Bill of Exchange Act, Cap B8, Laws of Federation of Nigeria (LFN), 2004, which defines ‘Banker’ as ‘a body of persons whether incorporated or not who carry on the business of banking’. Similarly, section 66 of the Banks and other Financial Institutions Act (BOFIA) Cap B3, LFN, 2004, defines ‘bank’ to mean “a bank licensed under this Act”. Highlighting various activities of a bank, section 66 of BOFIA further defines ‘banking businesses’ to mean:

“The business of receiving deposits on current account, saving account or other similar account, paying or collecting cheques, drawn by or paid in by customer: provision of finance or such other business as the Governor may, by order published in the Federal Gazette, designate as banking business”.

The above goes to the definition of bank as universally understood. A bank could therefore be described as an organization or corporation which provides services such as: collection of money, safe keeping same and lending monies to customers under a pre-arranged agreement including interest taking. Of course, the practice of Islamic banking follows the same trend; save that, in Islamic banking system as oppose to conventional banking system, interest charging on loan and other banking transactions are prohibited. Islamic banking completely outlawed the taking of interest in financial transactions. The objective of this, according to Fakiyesi (2011) is premised on the superiority of *Allah*, who is the foundation of both Islam and Islamic banking. The

Holy *Qur'an* is the holy book of Islam and seeing as the true words of *Allah*. Islamic banking has root in the moral teachings and philosophies of the Holy *Qur'an*. Thus, banking practices which involve the receipt and payment of interest are not compatible with the teachings of *Allah*. In spite of this position, Zuiddin (1994) rightly observed that, Muslim societies at the inception of banking practices; were unable to keep completely away from interest based transactions when modern banks appeared on the scene. The move to stop this practice led to the formation of Islamic Banking Movement. The Movement has therefore made a significant impact on the world financial scene. Presently, the growing importance of Islamic banking in the global financial system cannot be over-emphasized. For instance, countries the world over are looking inwardly to tailoring their banking business toward Non-Interest Banking System advocated by Islamic Banking Movement.

The introduction of Islamic banking model into the Nigerian banking sector at the inception generated a lot of public outcry. Many people, at the period called, for its out-right rejection, some other people queried its *modus operandi* on the ground that Nigeria is accustomed to conventional banking system (Ajetunmobi, 2011; Muyiwa and Akanmu, 2011; Olokode, (2011); Rev. Akanisoko, 2011). The thrust of people's fears amongst others, are that, its introduction will complicate the existing conventional banking system; that the practice of Islamic banking may lead to Islamisation of the entire country on the premise that Nigeria is a secular state (Ajetunmobi, 2011; Adegbite, 2011). Given the sudden incursion of *Boko Haram* sect in the Northern region of Nigeria at the time material and unguided utterances from some quarters, the tendency to subscribe to the people apprehension was very high.

The introduction of Islamic banking system into the Nigeria banking sector had generated a lot of controversies and will continue to do so for a very long time. However, on deep reflection of the system in the few years that it has started operation in Nigeria *visa-vis* the criticisms that trailed its introduction, this paper seeks to address the following salient questions: How did Islamic banking system evolved? What are its underlying principles? What is the legal framework for the operation of the system in Nigeria? What are the perceptions of Christian and Traditional Religions on charging of interest in financial transaction? Is Nigeria indeed a secular state? The answers to the above questions are used to arrive at the recommendations in the conclusion to this paper.

EVOLUTION OF ISLAMIC BANKING SYSTEM IN NIGERIA

Banking system in the conventional way was ushered into the Nigerian economic system with the establishment in 1894 of the Bank of British West African (BBWA), later known as Standard Bank and now First Bank of Nigeria Plc. (Abdulqadir, 2009). The Anglo-Africa Bank which later became Bank of Nigeria was established in 1899. These were later joined by the Colonial Bank in 1917 (now Union Bank of Nigeria Plc.) and British and French Bank (now United Bank for African). The setup clearly shows the monopoly of the banking system by foreign banks whose main concerns were to serve the expatriates and the colonial interest (Abdulqadir, 2009).

The spirited attempt made by the indigenous entrepreneurs cum patriots to break the foreign banks monopoly resulted in proliferation or establishment of locally owned banks. However, due to lack of financial requirements and regulations to restrict and control the establishment and operation of banks, the few indigenous banks were suffocated out of business.

The situation caused some reactions from the nationalists, and this resulted in the enactment of the first Banking Ordinance in 1952, to regulate banking operations. Further agitations against the discrimination by foreign banks resulted in the draft of the Central Bank of Nigeria Ordinance and Banking Acts in 1958.

In 1991, Central Bank of Nigeria Decree 24 (CBN) and Bank and Other Finance Institutions Decree No. 25 were promulgated. The focus of these Decrees was to bring the new banks and other finance institutions emerging as a result of the 1987 financial liberation and deregulation under control. Right from the inception, the main feature of banking activities in Nigeria is dominated by an interest based model. However, the coming into the scene of the Banks and other Financial Institutions Decree (BOFID), 1991 revolutionised the sector. The Decree, in its categorisation of banks, provided among others, that 'the Bank shall, from time to time, determine the minimum paid-up share capital requirement of each category of banks licensed under the Decree' (section 9). To determine the category of bank that could be licensed in Nigeria, section 66 of the Decree made profit and loss sharing model a category of the Nigerian banks.

Premised on the above provision, Habib Nigeria Bank Limited was licensed in 1992. The bank was designed to offer non-interest banking services on one of its "windows", however, the bank did not commence operation until 1999. Among the pioneering products of the Bank at the inception of operation include non-interest current account, non-interest savings account and general purpose investment etc. In the

annals of Nigeria banking experience, the first proposed full-fledged Islamic bank is the JAIZ International Bank Plc. The bank came on board in 2004, when the CBN raised the minimum capital base of banks to the sum of ₦25 Billion Naira from ₦2 Billion Naira during the banking industry consolidation exercises. The bank was granted approval in principle to operate Islamic banking model pending its meeting the newly introduced capital base for banks in Nigeria. Due to the above, JAIZ International bank could not commence operation until September, 2011 and in between, Al-Barakah Microfinance commenced full operation in April, 2010 and thus making it the first bank to operate Islamic banking model in Nigeria.

Consequent to the introduction of Islamic banking model into the Nigeria banking sector, the CBN has continued to defend the introduction. For instance, the position of the CBN is that it is obliged, by law, to issue licences to appropriate entities for the establishment of Non-Interest Banking System (NIBS), provided they meet the regulatory requirements for the licences. To allay the fear of Nigerian on the operation of Islamic banking system, Moghalu (2011), said that the NIBS would exist side by side with the conventional banks. With the coming into operation of Islamic banking models in Nigeria, it is appropriate, at this juncture, to examine few of its salient principles and concepts

THE PRINCIPLES AND CONCEPTS OF ISLAMIC BANKING

The word ‘principle’ according to *Oxford Advanced Learner Dictionary* (Hornsby, 2015) amongst other means ‘a law, a rule or a theory that something is based on’, ‘a belief that is accepted as a reason for acting or thinking in a particular way.’ The *Black’s Law Dictionary* (Garner, 2004) also defines the word ‘principle’ as ‘a basic rule, law or doctrine.’ The word ‘concept’ on the other hands is defined as ‘an idea or a principle that is connected with something’ (Hornsby, 2015). From the foregoing definitions, a principle could be likened to manuals, which dictates the theory upon which something is based, while concept is the principle or idea that guides the doing of such things.

Islamic banking system is unique and is governed by its own distinct principles and concepts. These principles characterise its operation and make it distinguishable from conventional banking. For instance, Islam is the backbone of Islamic banking. In Islam, moral principles and objectives play important role in the general conduct of the practitioners and adherents. Therefore, the operation of Islamic bank is governed by Islamic ethos and moral values. Again, in Islam, the charging of interest (*riba*) is forbidden; hence, an Islamic bank offers no interest-bearing products or services. Furthermore, in its organisational

structure and corporate governance, Islamic bank has an Islamic Board. The objective of this Board is to ensure that the bank is operated in line with the *Shariah* (Schaik, 2001). In addition to the foregoing, other principles underlying Islamic banking generally includes the followings among others:

Prohibition of Riba

Islamic banking has the same purpose as conventional banking – to make money for the banking institute by lending out capital (Islamic Banking). However, under Islamic banking system, interest is completely disallowed. The word *Riba*, generally translated into English means ‘usury’ or ‘interest’. However, the word has a much broader meaning under *shariah*. In Islam, the word ‘*Riba*’ means ‘excess’, ‘increase’ or ‘addition’ (Nabil, 1986). *Riba*, in its *shariah* context, can be defined as an unlawful gain derived from the quantitative inequality of the counter valued in any transaction purporting to affect the exchange of two or more species, which belong to the same genus and is governed by the same efficient cause.

Under Islamic banking system, interest is prohibited, be it simple or compound interest charged on productive or unproductive consumption loan. Simply put, interest is a predetermined return on money deposited or lent. It is the payment of interest on both the principal and the previously accumulated interest which increases the amount paid for money use above simple interest. This practice is strongly prohibited by the *Qur’an* and *Sunnah* of Prophet Mohammed. The Holy *Qur’an* 2: 275, provides thus:

“Those who eat Riba (usury will not stand on the day of Resurrection) except like the standing of a person beaten by Satan leading him to insanity. That is because they say: Trading is only like Riba (usury). Whereas, Allah has permitted trading and forbidden Riba (usury)....”

Similarly, in Chapter 3:130 of the *Holy Qur’an*, charging of interest on financial transaction is condemned in the following term: ‘*O you who believe, devour not riba, doubled and multiplied, but fear Allah that you may prosper*’. Interpreting the above verse, Banbale (2007) posits that the fear of *Allah* should hinder Muslims from charging interest when they engage in business involving monetary transactions such as loan. The return for the observance of the above *Holy Qur’an* injunction is multiple blessing from *Allah*. While those who engage in *riba* taking will receive outright condemnation by *Allah*. This is because, in Hadith, the giver and taker are cursed by *Allah*.

Ban on Uncertainty

Uncertainty in terms and conditions of all transactions are prohibited and not allowed under Islamic legal jurisprudence. All the terms and conditions of the associate profit and loss should not only be clearly spelt out but must be thoroughly understood by all parties to the financial transaction at the take-off of the business (Fakiyesi, 2011). This principle, in summary, calls for transparency in financial transactions between banker and customers. The principle could be appreciated on the ground that in conventional banking system, there are hidden charges in the terms and conditions attached to loan facilities. These hidden terms are often expressed in the following words:

“The bank reserves the right to vary the interest rate according to the prevailing rate without prior notice to you and recall the facility at any time if condition warrants such action”

In practice, most conventional banks usually hid under the above clause to charge high interest rate not known to customer at the inception of the transaction.

Prohibition of Unethical Investment

Islamic banking is restricted to Islamic acceptable transactions, thus, it excludes transactions involving alcohol, pork, gambling, and pornography etc. The aim of this is to engage in only ethical investment and moral purchasing thus ultimately reduce social vices and immoral conduct (Fakiyesi, 2011). This rationale is captured in Chapter 2: 173 of the Holy *Qur'an* thus:

‘He has forbidden you only the maitat (dead animals) and blood and the flesh of swine, and that which is slaughtered as sacrifice for others than Allah’, (Al-Halali and Khan, 1982).

Asset Backing

Under Islamic banking system, each financial transaction must be tied to a tangible and identifiable asset. Islamic law treats money strictly as a medium of exchange. Money has no inherent value on its own. It is not part of tangible goods and therefore should not lead to the production of more money. The reason for this, according to Fakiyesi (2011), is to transform all assets into gold standard or its equivalent whose value does not deteriorate over time.

Musharakah

Musharakah (partnership or joint venture) is an agreement between two or more partners, whereby each partner provides funds to be used in a venture. Islamic financial institutions translate the term as ‘participation financing’ (Nabil, 1986). The term is synonymous to an Arabic word ‘*Shirkah*’ which means ‘sharing’. Thus, under Islamic law, the

development of financial instruments is to be done on the basis of profit and loss sharing including risks. Economic agents involve in any financial transaction must share from the associated profit and loss of the transaction entered into. The sharing ratio should be spelt out in the terms and conditions that apply to such transaction at the outset of the business.

Profits made are shared between the partners according to the invested capital. In case of loss, each partner loses capital in the same ratio. If the bank provides capital, the same conditions apply. It is this financial risk, according to *shariah*, that justifies the banks claim to part of the profit. Each partner may or may not participate in carrying out the business (Islamic Banking). A working partner gets a greater profit share compared to a sleeping partner.

The difference between *musharaka* and *madarabah* is that, in *musharaka*, each partner contributes same capital, whereas in *madarabah*, one partner e.g. a financial institution provides all the capital and the other partner, the entrepreneur, provides no capital.

Mudarabah

It is generally defined as the sale of a commodity for the price at which the vendor has purchased it, with the addition of stated profits known to both the vendor and the purchaser. '*Mudarabah*' is a special kind of partnership where one partner gives money to another to invest in a commercial enterprise. The investment comes from the first partner who is called "*rabbul-mal*," while the management and work is an exclusive responsibility of the other who is called '*mudarib*'.

The *mudarabah*, is simply, cost-plus-profit contract, with one party providing 100 percent of the capital and the other party providing its specialist knowledge to invest the capital and manage the investment project. Profits generated are shared between the parties according to a pre-agreed ratio. Compared to *musharaka*, in a *mudarabah*, only the lender of the money has to take losses (El-Gamal, 2000).

Again, in a typical Islamic mortgage transaction, instead of loaning, the buyer may borrow money to purchase the item; a bank might buy the item itself from the seller, and re-sell it to the buyer at a profit, while allowing the buyer to pay the bank in installments. However, the bank's profit cannot be made explicit and therefore there are no additional penalties for late payment. In order to protect itself against default, the bank asks for strict collateral. The goods or land is registered in the name of the buyer from the start of the transaction. This arrangement is also called *Murabahah*. Another approach is *Eljara wa Elqtina*, which is similar to real estate leasing. Islamic banks release money for vehicle and sell the vehicle at a higher-than-market price to

the debtor and then retaining ownership of the vehicle until the loan is paid.

Musawamah

This is the negotiation of a selling price between two parties without reference by the seller to either costs or asking price. While the seller may or may not have full knowledge of the cost of the item being negotiated, they are under no obligation to reveal these costs as part of the negotiation process (Fakiyesi, 2011).

The difference in obligation by seller is the key distinction between *murabahah* and *musawamah* with all other rules as described in *murabahah* remaining the same. *Musawama* is the most common type of trading negotiation seen in Islamic commerce.

THE LEGAL FRAMEWORK FOR THE TAKE OFF OF ISLAMIC BANKING IN NIGERIA

The practice of Islamic banking is not completely a new phenomenon in Nigeria. The practice has root in the pre-colonial day. A peep into history reveals that the Islamic banking, although in informal way, was practiced within the old Sokoto Caliphate between 19th - 20th centuries. However, the system was restricted to the Northern part of the country until the arrival of the conventional banking system in the territory through the British colonial rule. Conventional banking system is premised on making of profit and the easy avenue to this is by charging of interest on loan and other monetary transactions.

In 1991, the CBN Decree No. 24 and BOFID No. 25 were enacted. For the first time, the promulgation of BOFID (now BOFIA, Cap B3, LFN, 2004) heralded the establishment and practice of Islamic banking in Nigeria in its formal characteristics. This Decree recognizes the establishment of bank base on profit and loss sharing (section 66). However, the regulatory and supervisory frameworks were not in place until March, 2009 when the first draft was released by the CBN during the era of Professor Charles Soludo as the Governor of the CBN. The draft, in principle, provides for the licensing of an Islamic bank in the following terms: 'Islamic banks, referred to as non-interest banks shall be licensed in accordance with the requirements for a new banking licence issued by the CBN from time to time'. On being licensed, the following legal requirements are to govern its operation:

- (a) Conventional banks operating in Nigeria may offer *shariah*-compliant products and services through their non-interest banking branches or windows. However, such branches or

windows cannot offer conventional banking or interest based products and services.

- (b) Banks offering NIBS products and services shall not include the word "Islamic" as part of their registered or licensed name (section 43 (1) of BOFIA). They shall however, be recognized by a uniform logo to be designed and approved by the CBN. The CBN shall require all the banks' signages and promotional materials to carry the logo to facilitate recognition by consumers.
- (c) The CBN shall set up an advisory committee on NIBS within the CBN to be called the CBN *Shariah* Council (CSC), which will be outsourced. The Council shall advise the CBN on Islamic laws and principles for the purposes of regulating NIBS business.
- (d) All non-interest banks are required to maintain a minimum Risk Weighted Asset Ratio of 10.0% or as may be determined by the CBN from time to time for the purpose of calculating its Capital Adequacy Ratio (CAR).
- (e) All applications must be submitted with the required documents including a Non-refundable application fee of ₦500,000.00 and deposit of minimum capital of ₦25 billion with the CBN.
- (f) Not later than six (6) months after the grant of an Approval In Principle (AIP), the promoters of a proposed bank must submit application for the grant of a final banking license to the Director of Banking Supervision with a Non-refundable licensing fee of ₦5 million in bank draft payable to the CBN and other required documents.

The above legal requirements were released by the CBN to facilitate the taking off and operation of Islamic banking in Nigeria. These legal requirements, it is observed, are capable of serving dual purposes. First, they will protect the interest of the bank as well as its customers. Secondly, they are capable of fast tracking Nigeria economy. According to Olokode (2011), 'certainly, our polity stands to reap abundantly from the consciously-packaged platforms of constructive engagements if operated wisely devoid of religious polarization. Indeed, if the system is properly implemented, it has the prospects to turn Nigeria economy around for better as is the case in Malaysia, Saudi Arabia and Europe countries where the bank has impacted positively on their economy and financial transactions. Although, as noted above, Islamic banking has many advantages, however, it also has some disadvantages. Hence, it is appropriate to examine the challenges and prospects of the system.

CHALLENGES CONFRONTING ISLAMIC BANKING

No system is absolutely perfect; thus, Islamic banking system is not devoid of its own challenges. The challenges confronting the system as observed in other jurisdictions have contributed to skepticisms expressed by people after its introduction into Nigeria banking sector (Muyiwa and Akanmu, 2011). Analyzing the problems of Islamic banking Schaik (2001) has listed the following four major challenges:

Profit-loss-sharing (PLS) is unpopular

For instance, clients are unwilling to share too much information and profit with the banks. As a result of this, PLS-financing attracts many high-risk/low-reward projects. PLS is known as *musharakah*. The major problem of this concept is that it gives room for an indolent partner since one of the partners in *musharakah* may not participate actively in the carrying out of the object of business or transaction. Yet at the end of the day, he is expected to share in the profit yield of the transaction. The system may also lead to rip off unless the partners are transparently faithful in their dealing in the joint venture.

PLS is not suitable for short-term financing or for the non-profit sector

Companies often need finances for short-term liquidity. The administrative procedure of PLS is too lengthy to answer such urgent needs. Furthermore, it is difficult to determine the return on financing liquidity. The same applies to financing the non-profit sector. Unless there is a profit to be shared, PLS is not suitable for business transactions,

Lack of developed Islamic financial products, institutions and markets

Owing to lack of suitable financial instrument, Islamic bank still experiences difficulties in optimizing their risk, return and liquidity. Furthermore, the network of Islamic banks is still underdeveloped and too small. Finally, there are no developed Islamic money and capital markets. In case of liquidity shortages, Islamic bank cannot call upon the Central Banks, because it provides interest-based financing.

Islamic banking in non-Islamic countries is still difficult

Western banking legislation requires banks to guarantee the capital of depositors, and ensure them a fixed return. This is directly opposed to the PLS-principle. Furthermore, the valuation of Islamic banks' investment is a difficult and cumbersome task, for which no adequate procedures have been developed. As a result, Islamic banks fail to satisfy

most Central Banks' strict liquidity and capital adequacy requirements, and have great difficulty in obtaining permission in the West.

Apart from the above problems, other challenges confronting Islamic banking as highlighted by Adegbite (2011) include lack of skill (expertise) and awareness, absence of regulatory and supervisory framework, huge capital to meet the new banking reform, fiscal and taxation issues and absence of *Shariah* scholars.

The above challenges constitute teething problems confronting the operation of Islamic bank where ever it has just been introduced. However, as time goes on, some of these challenges will pave way for viable Islamic banking system.

PROSPECTS OF ISLAMIC BANKING

In spite of the aforementioned challenges, Islamic banking system has a lot of economic advantages. First, Islamic banking system derives its validity from Islamic core values and moral principles. Secondly, the concepts of justice, equality and solidarity are the essence of Islam; these concepts require that business must be conducted in an honest way. For example, the concept precludes monopolization, or abusing the ignorance or inexperienced partner. In summary, the economic advantages of Islamic banking include the following:

- (a) It enhances the critical sectors through the introduction of new financing instruments such as *musharakah* (joint ventures), *mudarabah* (profit sharing), *ijarah* (leasing), *Ijarah thummal' bai'* (hire purchase), mark-up etc to the banking public. This can also provide financial assistance for those Nigerians who were ethically precluded from conventional banking (Magaji, 2011).
- (b) Islamic banking protects the interests of depositors and customers thereby providing them with efficient and reliable services (Magaji, 2011).
- (c) Islamic banking monitors the health of individual financial institutions for the development of a sound and stable financial system through ensuring the effectiveness of monetary policy. For instance, Islamic banking is a financing format introduced by capital owners, shareholders, and depositors, to cure the financing ills in the areas of Investment, Banking, Insurance and Economic Development (Importance of Islamic Banking in

Muslim Minorities). The importance of Islamic banking is captured in the *Hadith* which says:

“Allah’s hand is over two-partners as long as one of them does not cheat the other, but when he cheats his partner, he withdraw it from both ‘(Darqutni)’”

Allah’s hand is therefore established into this network of co-operation for as long as the bank, as administrator, fulfils its duty to the investors and for as long as the clients honestly transact with the bank. Without such a system, the economic costs and hazards, of individually researched markets and investment opportunities, would be enormous and unevenly distributed. This is so, since very limited groups of people have access to capital as well as expertise in wide or particular areas. The development of necessary skills in all areas of operation is a requirement and since many capital owners cannot develop all the essential skills at any given moment, they have to resort to those who would manage the resources.

- (d) The Islamic banks, like conventional banks, also transfer risks from small financial groupings and individuals to greater financial sectors, thus strengthens its economic insurance and the viability to continue, in accounting terms, as a ‘Going-Concern’. This form of Risk-distribution is, in financial terms, an avenue for greater profitability and thus higher investment returns.
- (e) Islamic banks have a good avenue for managing the risk of contagion and systemic failure of the financial system (Magaji, 2011).
- (f) The CBN former Governor, Malam Sanusi (2011), while speaking on the prospects of Islamic banking observed amongst others that:

“The present economic reforms and favourable ranking by global rating institutions, have improved Nigeria’s profile as a viable investment destination. Given the positive market environment and latent opportunities in Nigeria, we anticipate that Nigeria will be seen as a safe haven for investors. ---The non-interest banking system would have a significant impact on the country’s financial system and the economy as a whole. The introduction of non-interest banking will herald the entry of new markets and institutional players such as the Islamic money market, Islamic assets management

companies. This will deepen the financial market and open up employment opportunities”.

Malam Sanusi further assert that the large amount of cash outside the banking system had increased the opportunities for Islamic banks to thrive in the country. This he attributed to the zero-interest regime, which a number of the un-banked population may find attractive.

CHRISTIAN AND TRADITIONAL RELIGIONS PERSPECTIVES ON CHARGING INTEREST IN FINANCIAL TRANSACTIONS

One of the arguments against the announcement of Islamic banking system into the Nigeria banking sector is that its operation is in consonance with the ethos and value system of Islam and may lead to islamisation of Nigeria (Ajetunmobi, 2011). For instance, Ajetunmobi argued that ‘the system is most inclusive and that it is governed by the principles laid down by the Islamic *Shariah* (Islamic Law), which principally forbidding the receipt and payment of interest on any of its transaction’. Similarly, a renowned preacher, Pastor Gomba Oyor, outrightly called for the renaming of the bank as ‘non-interest banking’ to allay the fears of Nigerians that the concept has religious colouration (Muyiwa and Akanmu, (2011).

Admittedly, Islamic banking model outlawed the charging of interest (*riba*) on any of its windows or products. However, the relevant question to ask is: ‘Is it only the Islamic religion that forbids charging of interest on loans and financial transactions? The answer is NO. The truth is that the underlying principle of interest-free transaction which distinguished Islamic banking from conventional banking is not alien to religious and cultures before and after Islamic religion. For instance, from the available historical facts, compound interest was forbidden by the Code of Hammurabi in C 1750 B.C (Nabil, 1986). Three thousand years later, Egypt adopted Article 232 of the same Code. Ancient Greek, particularly Athenian reformer, Solon (640-560 B. C) limited the rate of interest to 12 % in place of enslaving the debtor where he fails to pay. But during the time of Emperor Justinian (483-565 A D), the rate of interest varied between 4% and 12% depending on the nature of the operation involved and the rank of the borrower (Nabil, 1986).

Similarly, the Christian religion, which has root in biblical injunctions forbid the taking or charging of interest on loan or similar transactions. The book of Leviticus 25:36-37 (The Bible, 2004) provides thus:

“Take thou no usury of him, or increase: but fear thy God; that thy brother may live with thee. Thou shalt not give him thy money upon usury, nor lend him the victuals for increase”

The above passage is *impair materia* with the provision of the Holy *Qur’an*, Chapter 2:278 which provide thus: *“O you who believe devour not riba, doubled and multiplied, but fear Allah that you may prosper”*.

To both Christian and Islamic religions, charging of interest is forbidden on the following grounds: One, it signifies total fear and submission to the will of God, Two, it has element of punishment for the borrower and capable of increasing his poverty. ‘Interest’ (usury), by its simple meaning, is a predetermined or fixed sum owed to the lender irrespective of the outcome of the business venture in which the fund is used (Fakiyesi, 2011). The biblical injunction is the command of God to the Israelites through Moses on their way to Canaan land as promised by God. The objective of the injunction is to banish poverty from the land. The command was prelude by Leviticus 25: 35, which provides in concrete term that:

“And if thy brother be waxen poor; and fallen in decay with thee; then thou shalt relieve him: yea; though he be a stranger, or sojourner; that he may live with thee”

This Old Testament position is maintained in the News Testament. While teaching the Kingdom values, Jesus Christ, in unmistakable term, frowned at charging of interest on loan and all financial transactions as follows:

“[a]nd if ye do lend to them of whom ye hope to receive, what thank have ye? For sinners also lend to sinners, to receive as much again. But love ye your enemies, and do good; and lend, hoping for nothing again; and your reward shall be great, and ye shall be the children of the Highest: for he is kind unto the unthankful and to the evil” (The Bible, Luke 6:34-35).

From the perceptions of Islam and Christian religions, charging of interest on loan facilities under any guise is prohibited. To the two religions, observation of this ethical value is an invitation to prosperity and blessing of the land by God. If the practice is religiously followed, it is capable of turning around the Nigeria comatose banking sector into a buoyant one. This view has support in the words of the Archbishop of Canterbury, Dr. Rowan Williams, who in 2009 advocated the adoption of Islamic banking principle as possible cure for the ailing market occasioned by the conventional banking system (Lorenzo). While applauding the Vatican position, Olokode (2011) posits that ‘the

fascination of the Vatican for Islamic banking should be both edifying and placating to furious Nigerians. I totally agree with this assertion.

Although, there appear to be no formal literature supporting non-interest based transactions under the traditional setting, however, the popular mutual aid practices among the Yoruba people in the Western part of Nigeria known as 'Àáró' (joint work efforts among age groups during planting or harvest seasons), 'Èsúsú' or 'Àjọ' (friendly contribution or saving mechanisms devoid of interest taking among friends) and 'Òwẹ' (self-help works among people during harvest or planting season) all have similar features with the profit and loss sharing and joint ventures advocated by Islamic and Christian religions (Daramola and Adebayo, 1975).

Premised on the foregoing, one cannot but appreciate the foresights of the former Governor of CBN, Professor Soludo who, in concert with the seasoned and erudite world-class financial strategist, Dr. Okonjo-Iweala, introduced Nigeria to the Islamic Development Bank (IDB) before the coming into office of Malam Sanusi. The two of them are Christians and it is submitted that before they proposed the system into Nigeria, there certainly must have been some advantages inherent in the system. Malam Sanusi should be commended for taking a bold step for the actualization of Islamic banking practice in Nigeria.

THE CONSTITUTIONAL IMPLICATION OF ISLAMIC BANKING SYSTEM

I have just addressed the perceptions of Christian and Traditional religions on the charging of interest in financial transactions. It is on this note that it is appropriate to look into the provisions of the 1999 Constitution (as amended) to see whether the introduction of Islamic banking into the Nigeria banking sector is unconstitutional? The truth is that whenever issue of religion is raised in Nigeria, people easily raise the word 'secular' to condemn it with the argument that Nigeria is a secular state (Ajetunmobi, 2011; Adegbite, 2011). For instance, immediately Islamic banking was introduced, many people argued that Nigeria is secular state and that a banking system with religion undertone will affect other religion adherents.

The word, 'secular' according to *Oxford Advanced Learner's Dictionary* (Hornsby, 2015); Trimmingham, 1968) means: 'not connected with spiritual or religious matter' or 'living among ordinary people rather than in a religious community'. The question is whether Nigeria, with the proliferation of religious sects and tribes is a secular country? The answer is capital NO. It is submitted that, Nigeria rather than being

a secular state is a multi-religious country. It is arguable therefore that the bid to safeguard the religious beliefs and values of Nigerian informed the provision of section 10 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), which provides thus: *'The Government of the Federation or of a State shall not adopt any religion as State Religion'*.

The operative word in section 10 of the 1999 Constitution is the word 'shall', it is trite law that the word 'shall' when used in a statute or enactment 'is predatory rather than mere directive, compliance is therefore binding and not left to the discretions of the person to whom the enactment imposes the duty' (OAU v. Oliyide (2002) FWLR (Pt.105) 799 at 822; Agip (Nigeria) Ltd v. Agip Petroli International (2010) 2 SCM 1 at 56). Could we then say that given the provision of section 10 of the Nigeria Constitution and the judicial interpretation of the word 'shall', the Government of Nigeria has declared or will declare the country an Islamic nation just by the mere introduction of Islamic banking model into the banking sector? The answer, again, is capital No. There is no basis to assume the contrary, as a matter of fact, the draft framework for the license and operation of Islamic banking in Nigeria is explicit on this when it provides among others that: *"Conventional banks operating in Nigeria may offer sharia compliant products and services through their non-interest banking branches or windows. However, such branches or window cannot offer conventional banking or interest based products and services"*

The draft framework in order to remove religious colouration from the operation of the bank further provides thus: *"Banks offering non-interest banking products and services shall not include the word 'Islamic' as part of their registered or licensed name ... They shall however, be recognized by a uniform logo to be designed and approved by the CBN. The CBN shall require all the banks signages and promotional materials to carry the logo to facilitate recognition by customer"*(Emphasis is on section 39 of BOFIA).

Premised on the above, it is submitted that the operation of Islamic banking with all its paraphernalia and rudimentary is constitutionally guaranteed. The only *caveat* is that where a conventional bank decides to offer *shariah* compliant products through any of its non-interest banking windows, such branch or window cannot simultaneously offer conventional or interest based products and services. This is certain by the use of the word 'may' in the legal framework for the operation of Islamic banking by conventional banks. The word 'may' judicially means 'probability' (Ajayi Farms Ltd. v. N. A. C. B Ltd (2003) FWLR (Pt. 172) 1864 at 1888-1889).

Secondly, the prohibition of the use of the word 'Islamic' in the licensed or registered name of any bank that proposes to operate business on the basis of Islamic tenets and core values is a clear indication that the CBN is completely against registration of a bank having religious colouration. For avoidance of doubt, section 39 of the BOFIA provides thus:

"Except with the written consent of the Governor, no bank shall, from the commencement of this Decree, be registered or incorporated with the words 'Central', 'Federal', 'Federation', 'National', 'Nigeria', 'Reserve', 'State', 'Christian', 'Islamic', 'Moslem', 'Quranic', 'Biblical'"

However, for ease of identification by customers, Islamic banks can carry a logo, which must be designed and approved by the CBN before it is used. To ensure that no government in Nigeria, either at State or Federal level adopts any religion as state religion, section 38 (1) of the 1999 Constitution provides thus:

"Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance"

The above provision is part of Human Rights Chapter of the Constitution, which is universally recognized and acclaimed as inalienable right of all citizens in free democratic governance throughout the world (Magna Carter, 1215; Article 18 of UN Universal Declaration of Human Rights, 1948). The implication of this provision is that every Nigeria citizen has right to manifest and propagate his religion belief in worship, teaching, practice and observance either alone or in community with other people of equal minds. It also gives every Nigerian unfettered right to change his religious or belief at will. In other words, the introduction of Islamic banking, though having a leaning toward the ethos and cores values of Islam should not be killed at embryo without considering its positive sides. While pleading for understanding of the system, the Director General of West African Institute for Financial and Economic Management (WAIFEM), Professor Ekpo (2011) has this to say:

"First of all, we need to fully understand the meaning of Islamic banking, how it works in other countries and the economic benefits before we began to condemn CBN on the policy".

In view of the above analysis, it is submitted that the introduction of Islamic banking into the Nigeria banking sector is neither unconstitutional nor run contrary to any existing law in Nigeria. It is indeed the constitutional right of every Nigeria to have a platform where

they can transact business in line with the core values of their religion. However, if Christians in Nigeria want a 'Christian banking system', they are free to agitate for one rather than condemn Islamic banking model introduced into the country banking sector. Anything to the contrary is tantamount to discriminating against the Muslims in the country and therefore run contrary to the contents and intendments of the 1999 Constitution highlighted above. At least, there is a Christian bank in other countries as stated by Ekpo (2011) in his interview that '[i]n other countries, there is what is called Christian bank and people are getting the product to do businesses'.

CONCLUSION

Islamic banking has made headway into an increasing number of Western countries. This is indeed a new trend that is likely to carry on, as oil-exporting nations continue to accumulate wealth, GCC and South East Asian Islamic financial markets is developing. Companies in Western nations keep on competing to attract international investors. Nonetheless, despite the rapid growth of Islamic finance in the last few years, many supervisory authorities and practitioners are unfamiliar with the process by which Islamic banks are introduced into a conventional system (Juan, 2007).

It is observed that the foregoing reason was probably responsible for debates that trail the introduction of Islamic banking into Nigeria without considering its objectives. This paper has shed lights on the challenges of operating Islamic banking in Nigeria. The paper has also identified the principles involve in the processes; the paper equally highlighted some of the prospects the countries stand to gain in the introduction of Islamic banking into the banking sector to operate alongside conventional banking institutions. The paper has further examined the positions of all religions in Nigeria, which believe and encourage non-interest in financial transactions. The paper further settled the issue of secularity of Nigeria and concluded that Nigeria is not a secular state but multi-religious country. What is more, the paper also resolved the constitutional angle to the introduction of Islamic banking model and resolved that the system has constitutional backing. Having resolved the various questions agitating the minds and perceptions of Nigerian on the activities of Islamic banking system highlighted at the inception of this paper, this paper strongly supports full operation of the Islamic banking system in Nigeria. However, in view of multi-religious and ethnicities of Nigeria, the following suggestions are recommended:

That a supervisory authority should be instituted to provide a comprehensive regulatory framework, as well as developing a supportive

financial infrastructure for the operation of Islamic banking model in Nigeria.

At present, that there is no specific law regulating Islamic banking system save the provisions of BOFIA, which at most, is only accommodative, it is hereby recommended that a separate law and guidelines for the operation of Islamic banking should be enacted as done in countries like Malaysia and Bahrain. In Malaysia, Islamic Banking Act was enacted in 1983 as a separate law and this was later followed by Takaful Act in 1984. The United Kingdom has also reviewed some of her statutes to accommodate Islamic finances.

Finally, the CBN should constantly organise workshops and seminars to educate Nigerians on the positive economic aspects of Islamic banking and the impact this may have on the financial sector in the country.

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