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

Abstract

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 was due to the close linkage between Islamic banking practice and the Islamic religion ethical value against charging interest in financial transactions. For instance, people argued among others that the introduction is a clever attempt to Islamize the country. Of course, the fear appeared somewhat justified due to the utterances in some quarters, mostly from Muslim Scholars and Clerics, worst still, the sudden incursion of Boko Haram in the Northern part of Nigeria. However, having examined, with deep reflection, the close relationship between Islamic banking system and Islamic religion as well as the perspectives of traditional as well as Christian religions on charging interest in financial transactions; this paper aims to examine various issues raised by people consequent to the introduction of Islamic banking into the Nigerian banking sector. To enhance a full understanding of Islamic banking, the paper traces the evolution and various concepts and principles which characterizes Islamic banking system, the challenges and prospects inherent in the system, the statutory and constitutional frameworks for the operation of the system. This paper also discusses the position of Christian and traditional religions on charging of interest in financial transactions. The ultimate aim of the paper is to foster mutual understanding on the continued existence of Islamic Banking system in the banking sector 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 of 1900.¹ The only different between a bank and a money lender is that a bank is not subject to the provision of Money Lenders Act.² In an attempt to find meaning to various activities undertaken by banks, Ajayi³ chronicle the definitions by text-writers as follows: Sir John Paget defined 'bank' as "a corporation or person(s) who accept money on accounts, pay cheques on such accounts and collect cheques from customers". F. E Perry described 'bank' as "an establishment, which deals in money, receiving it on deposit or demand, collecting cheques from others and lending or investing the surplus until required".

Furthermore, the word 'bank' according to *Encarta Dictionary*⁴ 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 were statutorily captured in Nigeria as follows: In section 2 of the Bill of Exchange Act⁵, a 'Banker' is defined 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,⁶ defines 'bank' to mean "a bank licensed under

¹ Ajayi, O. A., *Law and Practice of Banking*, (Lagos, Andy-P Corporate Bureau, 1999), p. 1.

² See the case of *Chief Yekini Ojikutu v. Agbonmogbe Bank and 2 Others* (1966) cited by Ajayi, O. A., *op cit*, p.1

³ Ajayi, O. A., *op cit*, p. 2.

⁴ *Microsoft Encarta Dictionary*, 1999 online.

⁵ Laws of the Federation of Nigeria, 1990.

⁶ Cap B3. Laws of the Federation of Nigeria, 2004

this Act". While highlighting various activities of a bank and to aid easy understanding of its works, the section 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, under the Islamic banking system as oppose to conventional banking system, interest charging on loan and other banking transaction is prohibited. That is, Islamic banking completely outlawed the taking of interest in financial transactions. This is against the command of *Allah*. The objective of this, according to Fakiyesi⁷ 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 seen as the true words of *Allah*. Islamic banking is therefore a

⁷ Prof. Tayo Fakiyesi; "Islamic Banking and the Nigerian Financial System". Presented at the Round Table

Workshop at the Nigeria Institute of Advanced Legal Studies, University of Lagos, Akoka-Yaba on 6th June, 2011.

P. 2 See also Sanusi L. S., 'Islamic Finance in Nigeria: Issues and Challenges'. Being text of lecture delivered at Mansfield Institute of Higher Education (Mihe), United Kingdom, Leicester, June 17, 2011.

banking system that is based on Islamic tenets and practices. Islamic banking is rooted in the moral teachings and philosophies of the Holy *Qur'an*. To this end, banking practices which involve the receipt and payment of interest are not compatible with the teachings of Islam. However, in spite of the above position, Zuiddin Ahmed⁸ rightly observed that, Muslim societies at the inception of banking practice; 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; hence, at present, 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, while some people queried the *modus operandi* of the system owing to the fact that Nigeria is accustomed to conventional banking system.⁹ The thrust of people's fears amongst others,

⁸ Zuiddin, A., "Islamic Banking: State of the Art", Vol. 2, No. 1, 1994, *A Journal of Islamic Research and Training Institute (I.R.T.I)*, p. 30.

⁹ See in this connection Ajetunmobi. A, "Is Islamic Banking Relevant to Nigeria's Economic Development?"

July 12, 2011, (Tuesday), *The punch*, p. 16; Muyiwa, A and Akanmu, J., "Cleric flays Sanusi: Seek renaming of

Islamic banking", July 14, 2011, Thursday, *The Guardian*, p. 11; Rasheed Olokode, "Islamic Banking: Why the

Stress?", July 19, 2011, (Tuesday), *Daily Sun*, p. 19; and the comment of Rev. Duke Akanisoko, the Archbishop

are that, its introduction will complicate the existing conventional banking system; that the practice of Islamic Banking may lead to Islamization of the entire country, it was further argued in some quarters, that Nigeria is a secular state¹⁰ Of course, given the sudden incursion of *Boko Haram* in the Northern region of the country at the time and coupled with various unguided utterances from some quarters at the time material, the tendency to subscribe to the people apprehension was very high.

There is no doubt that the introduction of Islamic Banking system into the Nigeria banking sector had generated a lot of controversies and will continue to be a source of concern for a very long time. However, with deep reflection over the system in the few years that the bank has been in operation in Nigeria and couple with 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 and concepts? What is the legal framework for the operation of the system in Nigeria? What are the perspectives of Christian as well as Traditional Religions to the charging of interest in financial transaction? Is Nigeria indeed a secular state? The paper concludes with recommendations aimed at promoting a better understanding of Islamic banking system.

of Kubwa Anglican Diocese, Abuja at Pre-synod Press Conference of the Church held on July 13, 2011.

¹⁰ Ajetunmobi. A., *op cit*; See also the contrary opinion expressed by late Dr. Lateef Adegbite in reply to people agitations for the rejection of Islamic banking titled: "Islamic Banking: Challenges and Prospects", June 10, 2011, (Friday), *The Nation*, p. 58.

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.¹¹ The Anglo-Africa Bank which later became Bank of Nigeria was established in 1899. These were later joined by the Colonial Bank in 1917,¹² and British and French Bank.¹³ 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.¹⁴

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 operating indigenous banks were suffocated out of business.

The situation caused some reactions from the nationalists and resulted in the enactment of the first Banking Ordinance in 1952, to regulate banking operations. Further agitations against the discrimination of the foreign banks resulted in the draft of the Central Bank of Nigeria Ordinance and Banking Acts in 1958.¹⁵

¹¹ Abdulqadir I. A. (Ph.D), *Constitutionality of Islamic Banking in Nigeria: Contemporary Issues in Islamic*

Jurisprudence", A Book Published in Honour of the Chief Justice of Nigeria Hon. Justice Idris Legbo Kutigi, (Benin, Rawel Fortune Resources, 2009), p. 95.

¹² Later Called Barclay Bank in 1925 and now Union Bank of Nigeria Plc.

¹³ Now called United Bank for Africa.

¹⁴ Abdulqadir I. A. (Ph.D), *op. cit.*, p. 95.

¹⁵ *Ibid.*

In 1991, Central Bank of Nigeria Decree 24 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.¹⁶ Right from the inception, the main feature of banking activities in Nigeria since the colonial time and even up till now, is that the banking industry in Nigeria is dominated by an interest based model. However and for the first time, the coming into the scene of the Banks and other Financial Institutions Decree (BOFID) No. 25 of 1991 revolutionalized the sector. The Decree, in its categorization of banks in Nigeria, 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'.¹⁷ To determine the category of bank that could be licensed in Nigeria, section 66 of the Decree made profit and loss sharing model as a category of the Nigerian banks.

Premised on the above provision, Habib Nigeria Bank Limited¹⁸ 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 Central Bank of Nigeria raised the minimum capital base of banks to the sum of ₦25billion naira

¹⁶ The two Decrees were amended by Decrees No.3, and 4 of 1997 respectively; only to remove the limited autonomy granted the CBN by the 1991 Decrees.

¹⁷ See section 9 of the Decree

¹⁸ Previously called PHB Bank but now one of the Banks in Keystone Bank groups.

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 system in Nigeria.

Having introduced Islamic banking model into the Nigeria banking sector, the Central Bank of Nigeria (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 requirement for the licences. To allay the fear of Nigerian on the operation of Islamic banking system, Dr. Kingsley Moghalu, said that the NIBS would exist side by side with the conventional banks.¹⁹ 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*²⁰ amongst other means 'a law, a rule or a theory that something is based on', 'a belief that is accepted as a reason for

¹⁹ Dr. Kingsley Moghalu (Deputy Governor System Stability Department of CBN), "Re-purposing Capital: Non-Interest Banking in Nigeria" <http://www.leadership.ng/nga/articles/1144/2011/06/23eb-defends-Islamic/banking.html>. date accessed 12/7/ 2015 at 23.24 pm.

²⁰ Hornsby, A. S., *Oxford Advanced Learner Dictionary*. 7th edn. (New York, Oxford University Press, 2015), p. 1164.

acting or thinking in a particular way.' The *Black's Law Dictionary*²¹ 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'.²² From the foregoing, a principle could be likened to a manual or doctrine that dictates the theory upon which something is based, while concept is the principle or the 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 and concepts characterize its operation and make it attractive and distinguishable from conventional banking system. 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. Secondly, in Islam, the charging of interest (*riba*) is out-rightly outlawed; hence, an Islamic bank offers no interest-bearing products or services. Thirdly, in its organizational structure and corporate governance, Islamic banks have an Islamic Board. The objective of this Board is to ensure that the bank is operated in line with the *Shariah*.²³ In addition to the foregoing, other principles underlying Islamic banking generally includes the followings among others:

- a. *Prohibition of Riba* – Islamic banking has the same purpose as conventional banking – to make money for the banking

²¹ Garner, B. A., *Black's Law Dictionary*, 8th edn, (USA, Thomson West, 2004), p. 1231.

²² See Hornsby, A. S, *op cit*, p. 298.

²³ See generally Diederik Van Schaik, "Islamic Banking" Vol. 3, No. 1, April, 2001, *The Arab Bank Review*, pp. 43-52.

institute by lending out capital.²⁴ 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 sense under *shariah*. In Islam, the word '*Riba*' means 'excess', 'increase' or 'addition'.²⁵ *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.²⁶

Under Islamic banking system, interest is completely prohibited, be it simple or compound interest charged on productive or unproductive consumption loan²⁷. Simply put, interest is a predetermined return on money deposited or lent and it is strongly prohibited by the *Qur'an* and *Sunnah* of Prophet Mohammed. Thus, the Holy *Qur'an* in Chapter 2, verse 275, provides as follows:

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)

²⁴ "Islamic Banking", <http://www.w3.org/1999/xhtml>, accessed 14/7/2015 at 17.07 p.m.

²⁵ Nabil, A. S, *Unlawful Gain and Legitimate Profit in Islamic Law* (*Riba*, *gharar* and Islamic banking), London, 1986, p. 89.

²⁶ *Ibid*.

²⁷ Compound interest 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. If interest is compounded daily, the balance on an annual rate of 7 percent will rise by 1/365th of 7 percent each day; if compounded monthly, the balance will rise by 1/12th of 7 percent on the first day of each month.

whereas; Allah has permitted trading and forbidden Riba (usury)...²⁸

Similarly, in Chapter 3, verse 130 of the *Holy Qur'an*, charging of interest on financial transaction is condemned in unmistakable term as follows: 'O you who believe, devour not riba, doubled and multiplied, but fear Allah that you may prosper'. Interpreting the above verse, Banbale²⁹ posits that the fear of Allah should hinder Muslims from charging interest when they engage in business involving monetary transactions such as loan. In return for the observance of the above *Holy Qur'an* injunction is multiple blessing from Allah. Conversely, those who engage in *riba* taking will receive outright condemnation from Allah. This is because, in Hadith, both the giver and taker are cursed by Prophet.

- b. *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 associated 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.³⁰ 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. For instance, these hidden terms and conditions are often expressed in the following words or similar term:

²⁸ See generally Sanusi, L.S., *op.cit.*

²⁹ See Bambale, Y. Y, *Islamic Law of Commercial and Industrial Transactions*. (Lagos, Malthouse Press Limited,

2007), p. 157. See further *Qur'an* Chapters 30: 39, 4: 161; 3: 130, 2: 278-279, 281.

³⁰ Prof. Tayo Fakiyesi *op.cit.*, p. 6.

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 have hidden under the above clause to charge high interest rate not known to the customer at the beginning of the transaction.

- c. *Prohibition of Unethical Investment* - Islamic banking is restricted to Islamic acceptable transactions. This clearly excludes transactions involving alcohol, pork, gambling, and pornography etc. The aim of this is to engage in only ethical investment and moral purchasing, the rationale behind this is to reduce social vices and immoral conduct.³¹ This is captured in Chapter 2 of the Holy *Qur'an* in the following words:

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 Allah³²

- d. *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. In other words, money, in itself, does not have any inherent value and therefore not part of tangible goods. Hence, it should not lead to the production of more money.³³ The rationale for this

³¹ *Ibid.*

³² *Qur'an* 2: 173. See also Al-Halali M.T and Khan M.M. "Translation of the Meaning of the Noble *Qur'an* in the English Language", (Medinah, Saudi Arabia King Fahd Complex for the Printing of the Holy *Qur'an*) 1982, p.112.

³³ *Ibid.*

according to Tayo Fakiyesi,³⁴ is to transform all assets into gold standard or its equivalent whose value does not deteriorate over time.

- e. *Musharakah* – (partnership or joint venture). This is an agreement between two or more partners, whereby each partner provides funds to be used in a venture.³⁵ Islamic financial institutions translate the term as ‘participation financing’.³⁶ 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 as well as sharing risks.³⁷ Economic agents involved 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.³⁸ A working partner gets a greater profit share compared to a sleeping (non-working) 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

³⁴ Prof. Tayo Fakiyesi *op.cit.*, p. 6.

³⁵ “Islamic Banking”, <http://www.w3.org/1999/xhtml>. accessed 14/7/ 2013 at 17.07pm.

³⁶ A S. Nabil *op.cit.* at 91.

³⁷ Sarah S. H. Al-Riface, “Islamic Banking: Myths and Facts” available in www.arabinsight.org, date accessed 20th July 2014 at 8.56am .

³⁸ “Islamic Banking ”. available at <http://www.w3.org/1999/xhtml>, date accessed ; 14th July, 2014 at 5.07pm.

the capital and the other partner, the entrepreneur, provides no capital.³⁹

- f. *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 therefore a special kind of partnership where one partner gives money to another to invest it 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*'.⁴⁰

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.⁴¹

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

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.* See generally El-Gamal. M. A, "A Basic Guide to Contemporary Islamic Banking and Finance".

June 2000, available at elgamal@rice.edu. <http://www.ruf.rice.edu/elgamal>, accessed on 12th July, 2014 at 6.00pm.

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.

- g. *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.⁴²

This difference in obligation by the 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.⁴³

- h. *Gharar* – The definition of this term did not receive much attention from many authors. Thus, the few definitions advanced are not as comprehensive as expected from definitions. Ibu Qayyim al-jawziyya, in his treatise '*Ilam almuwaqqirin*' described *gharar*, as being the subject-matter that the vendor is not in a position to hand over to the buyer, whether this subject-matter is in existence or not.⁴⁴ Also, Al-Qarafi, al-faruq, equated *gharar* with an uncontrolled subject-matter, such as a bird in the air or fish in water.⁴⁵ However, an attempt to define the term in a comprehensive but short formula, was made by ibn Rusad, *Maliki* jurists of 6th century in his treatise '*Bidayat al-mujtahid*', where he write::

Gharar in sale transactions causes the buyer to suffer damages and is the result of want of

⁴² Prof. Tayo Fakiyesi *op. cit.* p. 7.

⁴³ *Ibid.*

⁴⁴ See Nabil, A. S, *op cit*, pp. 94-95.

⁴⁵ *Ibid.*

knowledge which affects either the price or the subject-matter. Gharar is averted if both the price and the subject matter are known to be in existence. If the parties have such control over them as to make sure that the exchange shall take place and, finally, if the date of future performance, if any, is defined.⁴⁶

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 only Northern part of the country until the arrival of the conventional banking system in the territory of the Nigeria through the British colonial rule. The practice of conventional banking system is premised on making of profit; hence, the easy avenue to this is by charging of interest on loan and other monetary transactions.

In 1991, the Central Bank of Nigeria (CBN) Decree No. 24 and Banks and other Financial Institutions Decree (BOFID) No. 25 were enacted.⁴⁷ For the first time, the promulgation of BOFID, No. 25 heralded the establishment and practice of Islamic banking in Nigeria in its formal characteristics. This Decree

⁴⁶ *Ibid.*

⁴⁷ Note: The two Decrees were amended by Decrees No. 34 and 4 of the 1997 respectively. These Decrees were further amended by Decrees No. 37 and 38 of 1998 and Decrees No. 41 and 40 of 1999 respectively; the last amendments being the Central Bank of Nigeria Act of 2007 and the changing of the name of the Bank and other Financial Institution Decree into an Act and christened Bank and other Financial Institutions (BOFIA) Act, Cap B3, Laws of the Federation of Nigeria, 2004.

recognised the establishment of bank base on profit and loss sharing.⁴⁸ 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 Chukwuma Charles Soludo as the Governor of the Central Bank of Nigeria. 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 non-interest banking products and services shall not include the word "Islamic" as part of their registered or licensed name.⁴⁹ 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 Central Bank shall set up an advisory committee on non-interest banking 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 non-interest banking business.
- d. All non-interest banks are required to maintain a minimum Risk Weighted Asset Ratio of 10.0% or as may be determined

⁴⁸ See section 66 of the Bank and other Financial Institutions Decree (BOFID), No. 25, 1991 as amended.

⁴⁹ This, the draft described as being in line with the provisions of Section 43 (1) of Banks and other Financial Institutions Act (BOFIA) 1991 (as amended).

- 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 Central Bank of Nigeria.
 - f. Not later than six (6) months after the grant of an Approval In Principle (A.I.P), 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.⁵⁰

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. For instance, they will protect the interest of the bank as well as its customers. The beauty inherent in Islamic banking is that it is capable of fast tracking the Nigeria economy. According to Rasheed Olokode,⁵¹ '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 utilized, it has the potential to turn the Nigeria economy around for better as witnessed in other countries such as: Malaysia, Saudi Arabia and Europe countries where the bank is currently making positive impacts on their economy and financial transactions.

Having said that, it should be noted that in as much as Islamic banking has advantages, it also has some disadvantages. It is appropriate at this juncture to examine some of the challenges

⁵⁰ "Islamic Banking" available at <http://www.W3.org/1999/xhtml>, accessed 14/7/2013 at 17. 08pm.

⁵¹ Rasheed Olokode, *op cit*.

and prospects of Islamic banking for a better appreciation of the system.

CHALLENGES CONFRONTING ISLAMIC BANKING IN NIGERIA

No system is absolutely perfect; hence, Islamic banking system is not without its own challenges. Some of the challenges confronting the system as observed in other jurisdictions where the system is in full operation have contributed to skepticisms expressed by people after its introduction into Nigeria banking sector by the CBN.⁵² While analyzing the problems of Islamic banking, Diederick Van Schalk⁵³ listed four major challenges that are currently affecting Islamic banking. These challenges are highlighted below:

- a. Profit-loss-sharing (PLS) is unpopular – with both Islamic banks and clients. For the banks, there are too few attractive projects with an acceptable level of risk. 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, and uncooperative, or even fraudulent, entrepreneurs.

This concept 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

⁵² See for instance the criticism of Rev. Duke Akanisoko, the Archbishop of Kubwa Anglican Diocese, Abuja at Pre-synod Press Conference of his Church on July 13, 2011 and reported by Muiyiwa Adeyemi and Joke Akanmu and caption: "Cleric flay Sanusi: seek renaming of Islamic banking", July 14, 2011, (Thursday), *The Guardian*, p. 11.

⁵³ Diederik Van Schaik, *op. cit.* at.51.

partners are transparently faithful in their dealing in the joint venture.

- b. 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.⁵⁴ Unless there is a profit to be shared, PLS is not suitable for business transactions,
- c. There is a 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.
- d. 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 central banks' strict liquidity and capital adequacy requirements, and have great difficulty in obtaining permission in the West.⁵⁵ Apart from the above problems, other challenges confronting Islamic banking as highlighted by Dr. Lateef Adegbite⁵⁶ include lack of skill (expertise) and awareness, absence of regulatory

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ Dr. Lateef Adegbite, *op cit.* p. 58.

and supervisory framework, huge capital to meet the new banking reform, fiscal and taxation issues and absence of *Shariah* scholars.

The above challenges are some of the 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 and foremost, Islamic banking system derives its validity from Islamic core values, moral principles and objectives. Similarly, 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 of an inexperienced partner. In sum total, the economic advantages of Islamic banking could be gleaned from the following perspectives:

- 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 banking⁵⁷.
- b. Islamic banking protects the interests of depositors and customers thereby providing them with efficient and reliable services.⁵⁸
- c. Islamic banking monitors the health of individual financial institutions for the development of a sound and stable financial

⁵⁷ Chiroma Magaji, "Legal Feasibility and Economic Viability of Establishing Islamic Banking: An Analysis under the Nigeria Legal Framework", Vol. 1, No. 2, 2011, *University of Ibadan Law Journal*, p. 97.

⁵⁸ *Ibid*

system through ensuring the effectiveness of monetary policy.⁵⁹ For instance, Islamic banking is a financing format introduced by capital owners, shareholders, investors, and depositors, to cure the financing ills in the areas of Investment, Banking, Insurance and Economic Development.⁶⁰ 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 their counter parts, the interest-dealing 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.

⁵⁹ *Ibid.*

⁶⁰ 'Importance of Islamic Banking in Muslim Minorities'. Available at <http://www.W3.org/1999/xhtml>, date accessed 14/7/2014 at 17. 08pm, pp. 1-7

- e. Islamic banks have a good avenue for managing the risk of contagion and system failure of the financial system.⁶¹
- f. The Central Bank of Nigeria former Governor, Malam Sanusi Lamido Sanusi,⁶² 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.

On the prospects for Islamic banking in Nigeria, Mallam Sanusi further said 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.

⁶¹ Chiroma Magaji, *op cit*, p. 97.

⁶² Malam Sanusi, L. S., "Islamic Banking and the Nigerian Economy." The Paper was delivered on his behalf by Dr. Bashir Aliyu, his Special Advisor on Islamic Banking at the 9th Executive Walimatul-Quran and 8th Nigeria Muslim Merit Award presentation, organized by Al-Habibiyah Academy, Abuja.

TRADITIONAL AND CHRISTIAN RELIGIONS PERSPECTIVES TO CHARGING OF INTEREST IN FINANCIAL TRANSACTIONS

One of the arguments which followed the announcement of Islamic banking system into the Nigeria banking sector is premised on the fact that the operation of Islamic banking is in consonance with the ethos and value system of Islam.⁶³ Commenting on this, Abdulsalam Ajetunmobi argued that 'the system is most inclusive, it is governed by the principles laid down by the Islamic *Shariah* (or Islamic Law), principally forbidding the receipt and payment of interest on any of its transactions'. Also, a renowned preacher, Pastor Gomba Fortune Oyor, out-rightly called for the renaming of the bank as 'non-interest banking' to allay the fears of Nigerians that the concept has religious colouration.⁶⁴

Admittedly, Islamic banking model outlawed the charging of interest (*riba*) on any of its windows or products. However, the relevant question to ask ourselves is that: 'Is it only the Islamic religion that forbids charging of interest on loans and other 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.⁶⁵ After three thousand years later, Egypt adopted

⁶³ See generally Ajetunmobi. A, "Is Islamic Banking Relevant to Nigeria's Economic Development?", July 12, 2011, (Tuesday), *The punch*, p. 16.

⁶⁴ See Muyiwa .A and Akanmu. J, "Cleric flays Sanusi: Seek renaming of Islamic banking", July 14, 2011 Thursday, *The Guardian*, p. 11.

⁶⁵ Article of the Code was issued in C 1750 B. C. and Bocchoris of the Egyptian 24th Dynasty in (C. 730 - C. 715 B. C.). the two instruments forbid the taking of interest in excess of principal. See Nabil, A. S. *op cit*, p. 8.

the same rule in Article 232 of the same Code.⁶⁶ Ancient Greek, particularly Athenian reformer, Solon⁶⁷ limited the rate of interest to 12 % in place of enslaving the debtor where he failed to pay. But during the time of Emperor Justinian,⁶⁸ the rate of interest varied between 4% and 12% depending on the nature of the operation involved and the rank of the borrower.⁶⁹ In the same vein, the Christian religion, which is rooted in Biblical commands and injunctions, forbids the taking or charging of interest on loan or similar transactions. For instance, Leviticus, Chapter 25, verses 36-37⁷⁰ 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 quoted Bible passage is *impari materia* with the provision of the Holy *Qur'an* in Chapter 2, verse 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 the Creator and 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.⁷¹ The above biblical injunction is the command of God to

⁶⁶ *Ibid.*

⁶⁷ (640-560 B. C).

⁶⁸ (483 - 565 A. D).

⁶⁹ Nabil, A. *S.op cit*, p. 8.

⁷⁰ Leviticus 25: 36-37, *The Bible*, Authorized King James Version, (Apapa, Lagos, Bible Society of Nigeria, 18 Wharf Road, 2004), p.224.

⁷¹ Prof. Tayo Fakoyesi, *op cit*, p. 5.

the Israelites through Moses on their way to the land of Canaan 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 in concrete term provides as follows:

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.

The above Old Testament position is maintained in the New Testament. For instance, in His teachings on Kingdom values, Jesus Christ, in unmistakable term, frowned at charging of interest on loan and all financial transactions.⁷²

From the perceptions of the two major religions in Nigeria, one cannot but agree with the fact that the two religions condemn charging of interest on loan facilities under any guise. To the two religions, observance of this religious sanction is a direct invitation for 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. As a matter of fact, the Archbishop of Canterbury, Dr. Rowan Williams,⁷³ in 2009, had also advocated the adoption of Islamic banking principle as possible cure for the ailing market occasioned by the conventional banking system. Rasheed

⁷² See St. Luke, Chapter 6, verses 34-35, *The Bible, op cit*, p. 1613, where Jesus Christ said 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"

⁷³ Lorenzo Totaro, "Vatican Says Islamic Finance May Help Western Banks in Crisis" Bloomberg, L. P. available in <http://www.bloomberg.com/apps/news?pid=20601092&sid=aOsOLE8uiNOg&refer=Italy>. Retrieved on 13th April, 2014 at 4.15pm.

Olokode⁷⁴ while applauding the Vatican for his position posits that 'the fascination of the Vatican for Islamic banking should be both edifying and placating to furious Nigerians. I totally agree with this position.

Although, there may appear to be no formal literature supporting non-interest based transactions under the traditional setting, however, the popular mutual aid practice among the Yoruba people known as 'Àáró'⁷⁵ 'Èsúsú' or 'Àjọ'⁷⁶ 'Òwè'⁷⁷ has similar features with the profit and loss sharing and joint ventures advocated by Islamic and Christian religions.

⁷⁴ Rasheed Olokode, *op cit.* p. 19.

⁷⁵ This is a form of joint work efforts by age groups and friends to encourage productivity and thereby checkmate poverty. Usually people within the same age group will on rotational basis work together in their farm during planting seasons to plant crops and other farm products. The result is bumper harvest and profit to individual members at the end of each year. It is also used to encourage lazy people to learn farming activities and be self-fulfill and sufficient as a person. In summary it is a form of partnership practice base on mutual trust among friends and age groups.

⁷⁶ Àjọ is a form of friendly contributions or saving mechanisms among friends in which they contribute or pool their resources together for collection on rotational basis among themselves without interest. The modern fashion

of this is Cooperative societies where members contribute money and borrow themselves with or without interest.

⁷⁷ This is used typically to honour one's in-law or a respected individual in the community by working on their farm

during the planting or harvest seasons to relief them of this burden. The practice of 'Àáró' 'Èsúsú' or 'Àjọ' and

'Òwè' among Yoruba was explained by Daramola, O and Adebayo, J., in their book titled: *Awon Asa ati Orisa*

Ile Yoruba, (Ibadan, Onibon-Oje Press & Book Industries (Nig.) Ltd, 1975), pp. 110-121. These concepts are

various ways in which traditional people helped them self to reduce poverty and lacks among themselves in

friendly and mutual manner without any interest charge for individual labour.

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

THE CONSTITUTIONAL IMPLICATION OF ISLAMIC BANKING SYSTEM

I have just addressed the position of Christian religion on the charging of interest in financial transactions. It was equally discussed in the section that the traditional religion did not support the charging of interest in financial transaction, but rather promotes cooperative and partnering efforts among friends and neighbours to assist themselves in order to reduce poverty in the land. It is on this note that it is appropriate to look into the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) to see whether the introduction of Islamic banking into the Nigeria banking sector is unconstitutional? There is no gain say that most often than not, when issue of religion is raised in Nigeria, people easily find solace in the word 'secular' to condemn it with the argument that Nigeria is a secular state.⁷⁸ For instance, the issue of secularity of Nigeria was one of the arguments raised when the Islamic banking was formally introduced into the Nigeria banking sector

⁷⁸ See Ajetunmobi. A, *op cit*; Dr. Lateef Adegbite *c.p cit*.p. 58.

The word, 'secular' according to *Oxford Advanced Learner's Dictionary*⁷⁹ means: 'not connected with spiritual or religious matter' or 'living among ordinary people rather than in a religious community'. The question to ask ourselves is whether Nigeria, with the proliferation of religious sects and tribes is a secular country? The answer is capital NO. It is safe therefore to say that, Nigeria rather 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 Constitution is the word 'shall', it is trite law and as held in plethora of judicial authorities 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'.⁸⁰ 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 country? The answer again is capital NO. There is therefore no basis to assume the contrary, as a matter of fact, the draft framework for the licensed and

⁷⁹ Hornby, A. S, *op cit*, p. 1334. See also 'Trimingham J. S. *The Influence of Islam upon African*, (London, Longman, 1968), p. 1.

⁸⁰ See the cases of *Obafemi Awolowo University v. Oliyide & sons Ltd.* (2002) FWLR (Pt.105) 799 at 822, *Paras A-B*; *Agip (Nigeria) Ltd v. Agip Petroli International & Ors* (2010) 2 SCM 1 at 56. *Professor Steve Torkuma Ugba v. Gabriel Torwaa Sustwan* (2012) 10 SCM 207 at 229 Para. C; and *Dr. Kamidi Opara & Ors v. Honourable Bethel Anadi & Ors* (2013) 12 SCM (Pt. 2) 475 at 495 just to mention few.

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 in the following terms:

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 customer⁸¹.

With the above provisions, it is submitted with respect, that the operation of Islamic banking with all its paraphernalia and rudimentary is constitutionally guaranteed with a *caveat* that where a conventional bank decides to offer *shariah* compliant products and services through any of its non-interest banking products or windows, such branch or window cannot pretend or simultaneously offer conventional or interest based products and services. In other words, the use of a particular branch or window to transact *shariah* compliant products and services is optional for conventional banks. This is made certain by the use

⁸¹ The emphasis is mine. This provision is also in tandem with section 39 of the BOFIA, 1991 as amended.

of the word 'may' in the legal framework for the operation of Islamic banking by conventional banks, which signifies, according to judicial interpretations; 'probability'.⁸²

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 use. What is more, to further ensure that no government in Nigeria, whether at the State or Federal level adopt any religion as state religion, the Constitution of the Federal Republic of Nigeria (as amended) provides in section 38 (1) as follows:

Every person shall be entitled to freedom of thought, conscience and religion, including

⁸² See the case of *Ajaji Farms Ltd. v. N. A. C. B Ltd* (2003) FWLR (Pt. 172) 1864 at 1888-1889, where the court held thus: 'The word 'may' is defined in *Black's Law Dictionary* as follows - An auxiliary verb qualifying the meaning of another verb by expressing ability, competency, liberty, permission, possibility, probability or contingency. In construction of statutes and presumably also in construction of Federal rules, the word 'may' as opposed to 'shall; is indicative of discretion or choice between two or more alternatives, but the context in which the word appear must be the controlling factor. See also the cases of *Attorney General, Iwo State v. Attorney General Rivers State* (1983)2 SCNLR 108 compare to *Mr. Oladiti Adesola v. Allhaji Raimi Abidoje* (1999) 73 LRCN 3256 at 3290EG.

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 contained in Chapter IV of the Constitution. This provision is universally recognized and acclaimed as inalienable right of all citizens in free democratic governance throughout the world.⁸³ The implication of this provision is that every Nigeria citizen has the freedom 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, does not, mean, it should be killed at embryo without considering its positive side. While pleading for understanding of the system, the Director General of West African Institute for Financial and Economic Management (WAIFEM), Professor Akpan Ekpo⁸⁴ has this to say:

First of all, we need to fully understand the meaning of Islamic banking, how it works in other

⁸³ The wording of the section is in tandem with the contents and spirit of the Magna Carter of 1215 and Article 18 of the United Nations (UN) Universal Declaration of Human Rights of 1948.

⁸⁴ Professor Akpan Ekpo, "Islamic Banking will benefit Nigeria's Economy." Professor Ekpo is a Christian and made the above submission during an interview with Udemé Clement of Vanguard Newspaper shortly after the introduction of Islamic banking into the Nigeria banking sector by the CBN. The interview is available at <http://www.vanguard.com/>, accessed on 14th July, 2014 at 5.08pm, pp. 1-5.

countries and the economic benefits before we began to condemn CBN on the policy.

In view of the above analysis, it is hereby asserted 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 Constitution of the Federal Republic of Nigeria highlighted above. At least, there is a Christian bank in other countries as stated by Professor Ekpo in his interview that 'In other countries, there is what is called Christian bank and people are getting the product to do businesses'.⁸⁵

CONCLUSION

Islamic banking has been making 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.⁸⁶

⁸⁵ *Ibid.*

⁸⁶ Juan Sole, "Introducing Islamic Bank into Conventional Banking Systems", *IMF Working Paper, WP/07/175*,

It is observed that the foregoing reason was probably responsible for debates on the introduction of Islamic banking into Nigeria without looking into its objective. This paper has shed lights on the challenges of operating Islamic banking in Nigeria. The paper has also identified the main traits in the process, the paper equally highlighted some of the prospects the countries stand to gain in the introduction of the institution into the banking sector to operate alongside conventional banking institutions. The paper has further examined the positions of the two major religions in Nigeria, Christian and Islamic religions which preach and encourage non-interest financial transactions. The paper further settled the issue of whether Nigeria is a secular state 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 introduction of Islamic banking system into the Nigeria banking sector highlighted at the inception of this paper, I strongly support the full adoption of the Islamic banking system into Nigeria banking sector. However, due to the multi-religious and ethnicities in Nigeria, the following suggestions are recommended:

In view of the fact that Islamic banking practice is expanding on daily basis the world over, a supervisory authorities should be instituted to provide a comprehensive regulatory framework, as well as developing a supportive financial infrastructure for the system in Nigeria.

It is observed 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 must be enacted as done in countries like Malaysia and Bahrain. For instance, 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 organize workshops and seminars to educate the populace 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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