

## **The Ambivalence of the 1999 Nigerian Constitution in Matters Relating to Secularism: a Case for a Constitutional Review**

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**ABSTRACT:** *The principle of secularity promotes tolerance in multi-religious community, state or nation. This principle does not banish the true worship of the true God. What it forbids is the adoption of a particular religion over and above every other religion. It does not deny the existence of God but forbids discriminatory practice carried out in the name of religion. The 1999 Constitution of the Federal Republic of Nigeria made provision in section 10 for the secularity of Nigeria and at the same time made provision in section 38 for the protection of the fundamental human right of freedom of thought, conscience and religion. However, the same Constitution provided for the establishment, composition and jurisdiction of the Sharia Court of Appeal and the Customary Court of Appeal in sections 275 and 280, respectively and these legal bodies have an overwhelming religious undertone. This, with respect, is a clear constitutional ambivalence and needs to be addressed by means of a constitutional review. Moreover, disbursing public fund to sponsor religious Programmes raises the assumption that Nigeria, in principle, is a secular state but in practice, a semi-secular state.*

### **I. INTRODUCTION**

Secularity is all about non-commitment to a particular religion. It is intended to provide a level playing ground for all stakeholders in a state or nation and seeks to prevent the imposition of one religion against another in a multi-religious nation. The Constitution of the Federal Republic of Nigeria, 1999 (as amended) makes Nigeria a secular state. In other words, Nigeria is not to be a place where people are forced to worship God in a particular way. It is an open provision which makes it possible for the people of Nigeria to choose this day whom the object of their worship shall be. It leaves people to freely choose whether to worship the Almighty God or gods of their choice. It detaches the state and its apparatus of authorities from religious considerations in all areas including that of appointments and other benefits including financial benefits. The secularity of Nigeria is protected by the organic law of the nation, which is the Constitution. Therefore, state religion is nowhere given a place in the Constitution. Nobody can be compelled to assemble or associate with other persons against his will. Thus, any purported drafting of any person against his will into an association, even by the operation of customary law, is in conflict with section 40 of the 1999 Constitution<sup>1</sup>.

### **II. SECULARITY AND FREEDOM OF RELIGION**

It is to be noted that the secularity of the Federal Republic of Nigeria is in tandem with the right to freedom of religion. The court of Appeal, Lagos Division held, inter alia, in *Tega Esabunor and anor. v. Dr. Tunde Faweya and 4 ors*<sup>2</sup> that the right to freedom of thought, conscience or religion implies a right not to be prevented, without lawful justification, from choosing the course of one's life, fashioned on what one believes in, and a right not to be coerced into acting contrary to one's religious belief. The limit of these freedoms in all cases are where they impinge on the right of others or where they put the welfare of society or public health in jeopardy. The sum total of the right of privacy and of freedom of thought, conscience or religion which an individual has, is that an individual should be left alone to choose a course for his life, unless a clear and compelling overriding state interest justifies the contrary.<sup>3</sup> The Court went further to hold that although a person

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<sup>1</sup> See S.10 of CFRN, 1999(as amended).

<sup>2</sup> See *Kalu James v. Elder O. O. Okereke (President of Ututu Development Union)* (2008) 13 NWLR (Pt. 1105), 544. See also *Agbai v. Okogbue* (1991) 7 NWLR (pt. 204) 391; see also S.40, CFRN, 1999 (as amended). (2008) 12 NWLR, 794 S.38, CFRN, 1999.

<sup>3</sup> See also *Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo* (2001) 7 NWLR (Pt. 711) 206, 810.

has a right to choose a course for his or her life, that right is not available to determine whether her son should live or die on account of her religious belief<sup>4</sup>. A person who has a right under any law is by virtue of that law given *locus standi* to appear in court and defend his right. *Locus standi* has been held to denote that a party has the legal capacity to initiate proceedings in a court of law and focuses on his aim to get his complaint before the court and on the issues he will be raising before it.<sup>5</sup>

Most countries of the world are multi- religious and as such, secularism is seen as the only legal tool used to stamp out religious persecution and denial of the individual right to freedom of religion through the state apparatus.<sup>6</sup> Nigeria is a multi religious state comprised of citizens who subscribe to different religious believes ranging from African Traditional Religion, Christianity and Islam to even the absence of religion (Irreligion). As such, it would follow that to stamp out religious disharmony and ensure a peaceful co-existence amongst the adherents of the different religions, the state apparatus of secularism must be adopted and truly practised. The question then is what is the secular status of Nigeria? This raging question has been the subject of arguments and discussions for a long time, a situation made worse by the lack of judicial interpretation on the matter. As such, it is the aim of this work to attempt bringing to bare the constitutional framework relating to secularism in Nigeria and what is obtainable in practice in order to arrive at a conclusion on the Nigerian secular status.

Secularism is a highly contested concept, which is why across different political systems; it is “unquestionably the most misused word”. This is partly because the concept can be used in several related, but different ways, thus making it difficult to know its exact meaning. It is therefore, not surprising that secularism is often equated with an ideology or a philosophy. Secularism is also sometimes used to imply separation of state from religion- a social movement. Against the background of this conceptual problem, it is more useful to describe a secular society or a secular state, then to define “secularism”.<sup>7</sup>

Secularism has been defined as a system of social organization that does not allow religion to influence the government or the belief that religion should not influence the government<sup>8</sup>. A secular state, therefore is a state or country that purports to be officially neutral in matters of religion, supporting neither religion nor irreligion. A secular state also claims to treat all its citizens equally regardless of religion, and claims to avoid preferential treatment for a citizen of a particular religion/ non religion over other religions/ non religion. Secular states do not have a state religion or equivalent, although the absence of a state religion does not guarantee that a state is secular<sup>9</sup>. On this basis, secularism is commonly regarded as an ideology that holds that religious issues should not be the basis of politics, or, in the extreme, that religion has no place in public life. Secularism, therefore, seeks to preserve the religious neutrality of government and cultures.<sup>10</sup>

Colonialism laid the foundation for the politics of secularism in Nigeria. The Europeans as part of their “civilizing mission” introduced Christianity as an instrument of civilisation. While the southern part of Nigeria received Christianity, the northern part was predominantly muslim. By the early decades of the 20<sup>th</sup> century, Islam had dominated the northern region while Christianity had been widespread in the South. For political expediency, the British prevented European missionaries from operating in the muslim – dominated north, where their indirect rule system was very efficient, thus religious tension and dichotomy existed in Nigeria throughout the colonial period. The religious division of the country played major roles in the political arrangement, which came into existence at independence in October 1960 when Nigeria inherited a parliamentary democracy deeply implicated in ethnic and religious pluralism. The ethno- religious configuration and attendant troubled inter- group relations set the tone of the politics of secularism. The Nigerian state soon realized the deadly impact religious issues could have on politics, following the virulent and vituperative debates it generated in the 1977- 78 constitutional conference, which gave birth to the Second Republic in 1979, hence, the constitutional adoption of secularism.<sup>11</sup>

### **III. CONSTITUTIONAL PROVISION RELATING TO SECULARISM IN NIGERIA**

The 1999 Constitution of the Federal Republic of Nigeria (the Constitution), as amended, provides that the government of a Federation or of a state shall not adopt any religion as state religion<sup>12</sup>. This provision is

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<sup>4</sup> *Esabunor v. Faweya (supra)*.

<sup>5</sup> See *Alhaji Usman Nasamu Saidu v. Abubakar Mallam Abubakar* (2008) 12 NWLR, 214.

<sup>6</sup> Nigerian Muse, [www.nigerianmuse.com/topics/multireligious](http://www.nigerianmuse.com/topics/multireligious)

<sup>7</sup> M. V. Kamath, 2007, “*What is Secularism?*”, News Today, [www.newstoday.com/guest/2702gu1.htm](http://www.newstoday.com/guest/2702gu1.htm).

<sup>8</sup> *Longman Dictionary of Contemporary English*, New Edition, p. 1482.

<sup>9</sup> <http://en.wikipedia.org/wiki/secular-state>.

<sup>10</sup> O. J. Shola “*Secularism and Religious Balancing*”, [www.irmgard-coninx.-stiftung.de/fileadmin/user-upload/pdf/culturalpluralism/Religion/Essay.omotola.pdf](http://www.irmgard-coninx.-stiftung.de/fileadmin/user-upload/pdf/culturalpluralism/Religion/Essay.omotola.pdf).

<sup>11</sup> O. J. Shola on *Secularism and the Politics of Religious Balancing*, *op.cit*.

<sup>12</sup> See S. 10, CFRN, 1999, as amended.

further strengthened by another section of the Constitution<sup>13</sup> by virtue of its guarantee of the freedom of thought, conscience and religion. Section 38 Of the Constitution provides sub-sections 1, 2 and 3 as follows:

1. 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;
2. No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony if such instruction, ceremony or observance relates to a religion other than his own, or a religion not approved by his parent or guardian.
3. No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.

It may be argued in the light of this provision that religious symbols (indigenous or received) have no place on public lands, national edifices, currency, flag, coat of arms, anthem, pledge and other national symbols. By this section, Nigeria is declared to be a secular state and therefore cannot join any organization that has a religious connotation .

#### **IV. CONSTITUTIONAL CONTRADICTIONS ON NIGERIA'S SECULARISM**

The Constitution made adequate provisions adopting secularity but went further to make other provisions which cast doubt on the supposed secularity. For instance, section 275 created the *Sharia* Court of Appeal; while section 280 created the Customary Court of Appeal despite the position of the Constitution on secularity which is contained in section 10. By this compromise, the constitution contradicted itself as sections 10, on one hand and 275 and section 280<sup>14</sup>, on the other hand are, patently, in mutual contradiction.<sup>15</sup> A constitution that makes Nigeria a secular state and at the same time makes room for a *Sharia* Court of Appeal and Customary Court of Appeal is in contradiction with itself.<sup>16</sup> Also, there is the unsavoury judicial divide in the country: common law in the South; and penal code in the North, ostensibly so because of religious differences which are in existence in Nigeria after almost 50 years of independence. Currently, Zamfara, Yobe, Taraba, Sokoto, Kebbi, Katsina, Kano, Kaduna, Jigawa, Gombe, Bauchi and Niger states have adopted the *Sharia* Penal Code.<sup>17</sup> According to Egwu,<sup>18</sup> the recent introduction of the *Sharia* criminal code in 12 northern states created complications. This complication, it is submitted, relates to the interpretation of section 10 of the Constitution in view of the introduction of religious based systems in Nigeria.

Is disbursing public fund to sponsor religious programmes in breach of the principle of secularism? According to Oyinlola, in 2010, the government at both Federal and State levels sponsored between 40 to 50 percent of the total people going for religious pilgrimages, the cost of each pilgrim was pegged at between N460, 000 and N540, 000.<sup>19</sup> Also, in an October 12, 2010 Circular, the Central Bank of Nigeria (CBN) said that the government had approved the purchase of Saudi Riyal Traveller's Cheque (SRTC) equivalent to \$750.00 as minimum and \$1,500.00 as maximum Personal Travel Allowance (PTA) for individuals at a concessionary exchange rate of N135.00 to the US Dollar. For pilgrims buying SRTC above \$1,000.00, the difference shall be bought at the prevailing Naira exchange rate to the US Dollar on the day of the purchase. Similarly, on November 5, the Central Bank of Nigeria issued another circular in respect to Christian pilgrimage. The said Circular states that "the government has also approved the purchase of a maximum of \$1,000 at a concessionary rate of N135 to the dollar by each intending pilgrim, as personal travel allowance". With official exchange rate at N150 and N152 at the parallel market, it means the government subsidized the 2010 pilgrimage by over N1.54billion. This is in addition to the over N14.93 billion, which is the full amount that the 110,000 pilgrims will expend on the annual religious obligation every year<sup>20</sup>. In 2008, the government spent well over N34 billion on both Muslim and Christian pilgrimages. This spending has been as old as the pilgrimage tradition in Nigeria itself whether from individual or government coffers.<sup>21</sup> The point being made here is not that the sponsoring of

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<sup>13</sup>See S. 38 (1) (2) and (3) of the 1999 Constitution, as amended.

<sup>14</sup> Kehinde Adegbite, "Is Nigeria A Secular or Non- Secular State?", *op.cit.*

<sup>15</sup> E. E. Onuoha, "Religion and State in Nigeria", *op.cit.*

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> S. G. Egwu, 2001, "Ethnic and Religious Violence in Nigeria", Jos, Nigeria, *African Centre for Democratic Governance* (AFRIGOV), p.45.

<sup>19</sup> M. Oyinlola, "How States, Federal Governments Fritter Millions on Pilgrimage", National Mirror, [www.nationalmirroronline.net/./2](http://www.nationalmirroronline.net/./2).

<sup>20</sup> Chris Nwodo, "Religion, Controversy and Hypocrisy", Nigeria Village Square, [www.nigeriavillagesquare.com/forum](http://www.nigeriavillagesquare.com/forum)

<sup>21</sup> Muiyiwa Oyinlola, "How States, Federal Governments fritter Millions on Pilgrimage", *op.cit*

religious pilgrimages by the government is morally bad. In fact, true spirituality is life indeed and a nation that has sound spiritual base would be blessed of God. Part of what we are saying is that the section 10 of the 1999 Constitution, as amended should be phrased, by way of an amendment, in such a manner as to countenance a semi-secularity structure instead of the strict secularity of Nigeria as is currently championed by the Constitution. Our further position is that such a practice, irrespective of its moral rightness, with respect and objective appraisal, is unconstitutional, especially in view of the said section 10 which has left religion to private decision. Secular countries do not use public funds to subsidize private spirituality.

## V. NIGERIAN SECULARITY AND RELIGIOUS BANKING SYSTEM

The Central Bank of Nigeria (CBN) has in recent times made moves to introduce the Islamic banking system and the move has attracted some criticisms. Some of his critics reasoned that Nigeria is a secular state and so the introduction of Islamic Banking smacks of Islamizing the state<sup>22</sup>. The CBN's initial Non-Interest Financial Institutions (NIFI)'s Framework of January 2011 defines Non-Interest Financial Institutions as "a bank or other financial institution (OFI) under the purview of the Central Bank of Nigeria, which transacts banking business, engages in trading, investment and commercial activities as well as the provision of financial products and services in accordance with *Sharia* principles and rules of *Islamic* commercial jurisprudence."<sup>23</sup> The Glossary of the Terms of the Central Bank of Nigeria's NIFI Framework states that: "*Shariah* principles refers to the divine guidance as given by the Holy Quran and the *Sunnah* of the Holy Prophet and embodies all aspects of the *Islamic* faith, including beliefs and practices."<sup>24</sup> The Central Bank of Nigeria Guideline, the Framework for the Regulation and Supervision of institutions offering Non-Interest Financial services in Nigeria (NIFI Framework), essentially redefined Non-Interest Financial Institutions as Islamic Banking contrary to the spirit and letter of the Banks and other Financial Institutions Act (BOFIA) of 1991 as amended ostensibly in the mistaken belief that only, Muslims are interested in that form of financial services.<sup>25</sup> Another of aspect of the Non-Interest Financial Institution Framework is that it provides for the creation of the CBN *Sharia* Council. The CBN *Sharia* Council main function is to "advise the CBN on *Shariah* matters for the effective regulation and supervision of Non-Interest Financial Institution Framework in Nigeria."<sup>26</sup>

The initial guidelines issued by the CBN, on the incorporation of the *Islamic* Banking Institution, we observe, contained a lot of religious connotations, which are not in tandem with the constitutional secularity of the country.<sup>27</sup> As a result of controversies this raised, the guideline was reviewed. The new guideline clarified the contextual definition of non-interest banking which it said is not restricted to *Islamic* banking, but also includes other forms of non-interest banking not based on *Islamic* principles. It specifically categorised non-interest banking models into non-interest financial products and services based on principles of *Islamic* commercial jurisprudence and others which are based on any other established rules and principles.<sup>28</sup> Another significant review of the guideline was the removal of any reference to "*Shariah* Council" which it changed to "Advisory Council of Experts".<sup>29</sup>

## VI. CONCLUSION

The question then is, is Nigeria a truly secular state? The provision of section 10 of the Constitution expressly says so. However, experience and situations show it is secular only in principle and not in practice. It is safe to conclude that Nigeria is not a secular state as claimed by the Constitution but is at best a quasi-secular state. The practices which contravene the secularism intended by section 10 of the constitution are overwhelming and are indeed the basis of religious uprisings and crisis in Nigeria. The only antidote to recurring religious uprisings and ceaseless agitations and counter-agitations of different religious bodies in a multi-religious state like Nigeria is the adoption of true secularism. Nigerian government at all levels must stop meddling in religious matters. No religious group should be singled out for preferential treatment or victimization.<sup>30</sup> Truly, a secular nation would provide a level playing ground for all citizens to freely chose their religious beliefs and practice those beliefs freely without any form of molestation from any person or group of

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<sup>22</sup> *Controversy still Trails Islamic Banking*, by NBF News, [www.the.nigerianvoice.com/nvnews/592](http://www.the.nigerianvoice.com/nvnews/592)

<sup>23</sup> Hajara Adeola, "*Islamic Banking: An Exclusion Model in Nigeria* ", Financial Nigeria, [www.financialnigeria.com/DEVELOPMEN...](http://www.financialnigeria.com/DEVELOPMEN...)

<sup>24</sup> Eghes Eyieyien, "*CBN, Islamic Banking, the Law and Appropriate Regulation*", *op.cit*

<sup>25</sup> *ibid*

<sup>26</sup> *Ibid.*

<sup>27</sup> "*Non-Interest Banking Controversy*", Nigerian Tribune, Mon,04 July 2011. [www.tribune.com.ng/index.php/editorial/...](http://www.tribune.com.ng/index.php/editorial/...)

<sup>28</sup> Obinna Chima, "*CBN Adjusts Guidelines on Islamic Banking*", This Day Live, [www.thisdaylive.com](http://www.thisdaylive.com)

<sup>29</sup> *Ibid.*

<sup>30</sup> Kehinde Adegbite, "*Is Nigeria A Secular or Non- Secular State?*", *op.cit.*

persons. Such a nation should not be a harbinger of religious disharmony. However, the weakness of section 10 is found in the fact that it does not stipulate any consequences that should follow its violation. There is need to make a violation of section 10 to attract a serious sanction since the section is contained under Chapter One of the Constitution which unlike Chapter Two is enforceable.<sup>31</sup>

Maintaining a position similar to the above view, Jide Osuntokun<sup>32</sup> recently advised: every effort must be made not to abandon the concept of a secular state because Nigeria cannot survive a religious conflict and we do not need to re- invent the wheels in this particular case of a secular state because the history of western civilisation has proved conclusively that secularity works and is the best way in a religiously plural country. Section 10 of the Constitution, titled “Prohibition of State Religion”, which has now become inactive must be revived. The way to do so is to subject that section to further clarification by means of subsections, which state clearly, with the benefit of hindsight, what can, or cannot, be done under the section<sup>33</sup>.

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<sup>31</sup> *Ibid.*

<sup>32</sup> Jide Osuntokun on “*Nigeria a secular or multi religious state*”, [www.thenationonline.ng.net/2011](http://www.thenationonline.ng.net/2011).

<sup>33</sup> Eze (Dr) Enyeribe Onuoha, “*Religion and State in Nigeria*”, *op.cit*