SECULARISM, ISLAMISATION AND THE PROSPE OF *SUKUK* UNDER NIGERIAN LAW

By:

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Abstract

The Federal Government of Nigeria (FGN) recently floated Sukuk bonds to finance road projects across the country. No sooner this was done, individuals and interest groups across the nation expressed varying degrees of dissent against the initiative, tagging it a plot to "Islamise" Nigeria, against the spirit and letter of the Constitution, and a violation of Nigeria's secular status. In light of this development, this paper examines the issues raised through a constitutional prism, and also, the legal framework for the issuance of Sukuk. This is achieved doctrinally in order to ascertain its compatibility with the secular system articulated in the Constitution. The paper, thus, reveals that while it is perfectly within the rights of any group to express fears and concerns over the FGN's prescription of a product based on Islamic jurisprudence, it is also important that it is done with moderation, as the move merely promotes inclusive participation in the financial sector by the substantial number of Muslims whose religion prohibits conventional bond due to its reliance on principles that are strictly incompatible with Islamic injunctions. The paper further argues that there is no legal basis, nor empirical proof that it is in violation of Nigeria's secular status or any constitutional principle. It, thus, recommends that the legal framework be concretized and vigorous enlightenment campaign is embarked upon by the FGN; also, a platform is established for constant engagement with interest groups in order to ensure that all persuasions are carried along.

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1.1.1 Introduction

In recent times, Nigeria has been faced with the difficulties in financing infrastructure because of the 2017 recession long years of mismanagement plunged the economy into and the nosedive in oil revenue, thus, forcing the government to proceed on hefty budget deficits. As an emerging economy, Nigeria urgently needs investments in infrastructure. This forced the government to re-assess its options, and, in this light, the option of *Sukuk* was considered and finally issued to finance various road projects across the nation.[1] Long before the Federal Government (FGN), the government of Osun State ventured into ***sukuk*** under its N60 Billion debt issuance programme.[2] This was preceded by the issuance of "Guidelines for Granting Liquid Asset Status to *Sukuk* Instruments Issued by State Governments" by the Central Bank of Nigeria (CBN) in order to enhance the diversification of sources of funding for development at the sub-national levels and foster robust financial system and economic growth and development.[3]

No sooner this was done, individuals and groups dominated the media, insisting that the FGN reverses the policy and halt further issuance of ***sukuk*** bonds on the ground that it purportedly violates the Constitution and desecrated Nigeria's secular status. The Christian Association of Nigeria (CAN) vehemently led the protest, alleging that it is meant to "Islamise" the country through the back door. It insisted that the FGN must dismantle all legal and institutional framework established to promote Islamic finance in Nigeria.[4] The atmosphere was reminiscent of the heat generated in 2011 when the Central Bank of Nigeria (CBN) issued guidelines on Islamic banking.[5]

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[1] The Debt Management Office (DMO) sold 100 billion naira ($328 million) debut sovereign ***sukuk*** in the local market help fund road projects. This is yet another debt offering from Nigeria, who has been looking for all possible ways of funding its deficit budget and triggering the revival of its economy which is still in recession. See Wabara, C.(2017), "6 things to know about Nigeria's upcoming sukuk bond", <https://nairametrics.com/6-things-to-know-about-nigerias-upcoming-sukuk-bond/> accessed on 16/11/2017

[2] Oladunjoye, M. O. (2014), Sukuk as a Tool for Infrastructural Development in Nigeria,*Journal of Islamic Banking and FinanceMarch 2014, Vol. 2, No. 1*, American Research Institute for Policy Development, p.336.

[3] Central Bank of Nigeria (CBN) Guidelines for Granting Liquid Asset Status to Sukuk Instruments Issued by State Governments,Ref: FMD/DIR/GEN/CIR/07/006 October 6, 2016

[4] Adepegba, A. (2017), "Sukuk Bond Part of Strategies to Islamise Nigeria – CAN", <http://punchng.com/can-alleges-plot-to-islamise-nigeria-with-sukuk-bond/>accessed on19/11/2017

[5] The Christian Association of Nigeria (CAN) promised by all means to resist any attempt to force Islamic principles on Nigeria and turn it into an Islamic state. See Sam, E. (2011) "Okogie Says No to Islamic Banking", *The Vanguard Post*. July 4, 2011, p.65.

Sukuk gives the investors rights to receive payment from trade transactions or ownership of a particular asset or business venture in contrast to returns on investment on conventional bondholders which is interest on borrowed funds as their return. Here, they are fundamentally at variance with conventional bonds in the sense that they are compliant with the principles of Islamic commercial jurisprudence and no interest[6] is accruable. What started as an idea of circumventing the interest charged on conventional bonds has now become a global product.[7]

Is Nigeria truly a secular state? If it is, is the FGN's issuance of *sukuk* a violation of any law, the Constitution, nay, Nigeria's secular status? Is it possible, that the mere floating of *Sukuk* could forcefully turn Nigeria into an "Islamic state" of sorts? This paper, therefore, seeks to examine secularism through a constitutional prism; the concept of *sukuk*, the legal framework for its issuance and other issues relating to the charge of Islamisationagainst the government. In order to achieve this broad aim, the paper will venture to examine the concept of secularism, a brief history of its western roots and ascertain whether the principles of secularism are entrenched in the Nigerian Constitution. Further, the legal framework and its prospects will be examined and how Nigeria is poised to taking the economic advantages of the product in remedying some of its infrastructural challenges.

1.2 The Concept of Secularism and Statehood in Nigeria

Secularism itself emerged through the context of the conflict between the state and the Church between 16th to 18th centuries in Europe. It was Holyoake in 1851, who coined the term "secularism" to champion the idea that religion must be restrained in the matters of state.[8] This led to the gradual delimitation of religion and spiritual authorities on state affairs. It marked the evolution of principles such as freedom of religion and conscience, tolerance, and a consequent democratic conception of citizenship. Secularism is whereby a state or country purports to be officially neutral in matters of religion, supporting neither religion nor irreligion, where all citizens are treated equally regardless of religion,

[6] *Riba* literally means the 'increase' or 'excess' above the principal on a loan, it is basicallyusury since it is an inherently illegitimate practice which has been condemned in the Qur'an. See Abdel-Rahman Yousri Ahmad, *"Riba, Its Economic Rationale and Implications"*<http://www.islamic-banking.com/iarticles_8.aspx> *accessed on 20th October, 2017.*

[7] Ofeimun, E. O. (2017), Exploring Bonds and *Sukuks* for Infrastructure Development", Being a Paper Presented on NIQS Worshop – July, 2017

[8] George Jacob Holyoake, *The Origin and Nature of Secularism*(London, 1986, p.4.1)

and the state does not play an active role in promoting any religion or belief.[9] A secular state is, therefore, —a state where citizens are not discriminated against in any form or manner on the basis of their religion. The secular state views the individual as a citizen and not as a member of a particular religious group[10] with equal rights.

Secularism is a highly controversial concept, not just in Nigeria but the world over. Its roots have challenged the fundamentals of the relationship between state and religion at a time when religion determined political authority and how it was wielded. From the United Kingdom, Turkey, Russia, India, to Africa, the topic evokes deep sentiments with variations in conceptualization and purpose. In many instances, it is used as a political tool. The reason is either that many scholars have no knowledge of its real history or *raison d'être*, or that insincerity and/or prejudice stand on their ways to an objective evaluation of what it is all about.[11] Secularism has no universal acceptable characterisation. However, there is a universal agreement that modern democracies have to be "secular". The modern concept itself is in many ways misleading. There are at least two models generally used to describe what constitutes a secular regime. Both involve that the state must be separated from organised religion and that the state cannot be officially inclined to any religion, except in a vestigial and largely symbolic sense, as in England or Scandinavia.[12] Secularism stretches beyond this in the sense that in a plural society, the state must actively be neutral, or what Rajeev Bhargava called the maintenance of a "principled distance," by the state.[13] A closer examination of the concept would reveal that there are certain fundamental principles that may guide in determining whether a state is secular not. The convergence of even a few of these components may suffice for a state to be held to be secular. For instance, the United Kingdom has no institutional separation of State and religion and yet it is regarded as secular, while on the other hand, the erstwhile United Soviet Socialist Republic (USSR) was anti-religious and yet could not be called truly secular, for there was no freedom of belief.[14] Thus, by

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[9] Majanga, B. B. (2015), "Is Time Ripe to Adopt Islamic Financial Systems in Secular Developing Countries? A Review of Literature".*Global Journal of Management and Business Research: Economics and Commerce*, Volume 15 Issue 8 Version 1.0 Year 2015, Global Journals Inc. (USA)

[10] Ogoloma, F.I., (2012),Secularism in Nigeria: An Assessment, *An International Journal of Arts and Humanities, AFRREV IJAH* Vol. 1 (3), August, 2012:63-74, Bahir Dar, Ethiopia, ISSN 2227-5452 (Online), p.65.

[11] Oyeniran, P. A.(2013), Secularization and the Imperative of Nigeria's Secularity,*IOSR Journal Of Humanities And Social Science (JHSS)*,Volume 6, Issue 4 (Jan. - Feb. 2013), p.34.

[12] Taylor (n 40) 23. Charles Taylor, 'The Meaning of Secularism' (2010) 12 *The Hedgehog Review*, p.23.

[13] Ibid

[14] Chapter II Secularism: Concept, Scope and its Importance, p.48<http://shodhganga.inflibnet.ac.in/bitstream/10603/77961/7/07_chapter%2002.pdf>accessed on 13 October, 2017

this contention secularism presupposes that there must be the right to freedom of religion in a secular state.

The Nigerian context presents a very complex situation, while it is contended by some that "church-state collusion" is still the order of the day in Nigeria,[15] some of the adherents of the Christian faith believe it is Islam that is guiltier of this charge.[16] The collusion referred to manifests itself in the mutual support sought and received among religious and political rulers, with particular reference to Christian and Muslim leaders whose religions are majority and dominant, socio-politically and economically. Political leaders spend public resources on their religious centers and leaders.[17]Sometimes, even go to the extent of using the pulpit to make policy announcements.[18]The understanding here is that secularism must not necessarily be adopted as obtained elsewhere, hook, line and sinker. On this trajectory, a former Justice of the Supreme Court, Justice Niki Tobi, expressed the view that Nigeria is not a secular state.[19]Hence, over the years, Nigerian scholars have oscillated between Nigeria being a secular state or otherwise, depending on their dispositions. While it is true that Nigeria is a multi-religious society, to my mind, the Nigerian constitution leaves no doubt that it tilts more towards secularism as will be seen in due course. Secularism, as stressed even by Holyoake, is not hostile to religion; rather, the state is not run on the basis of religious principles and fitting in a multi-religious society as it provides a level playing field for each religion to thrive. A secular state does not mean an irreligious state rather it means that in the matters of religion it will remain neutral. The state will not have any religion of its own, and will not interfere with any. Secularism reflects a policy of religious non-discrimination and equal liberty for all, including those who choose not to believe.

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[15] Oyeniran, P.A., Op. Cit., p.33.

[16] Francis Igata, "Islamisation of Nigeria is real", says Prof. Ben Nwabueze https://www.vanguardngr.com/2016/10/islamisation-nigeria-real-says-prof-ben-nwabueze/ aceessed on 13th October, 2017.

[17] Oyeniran, P.A., Op. Cit.

[18] This trend particularly characterized the Goodluck Jonathan administration. Before that, President Umaru Musa Yar'adua's health became a subject of controversy when Muslim clerics were invited to come pray for his recovery. As soon as this was done their Christian counterparts launched acerbic criticisms until they were also invited to the presidential villa to go pray for him. See, "The Tragedy of Jonathan's Pulpit Politics", Blueprint Editorial, <https://blueprint.ng/the-tragedy-of-jonathans-pulpit-politics/> accessed on 1st October, 2017; Sam Eyoboka "Onaiyekan, Oyedepo, 2 others meet Yar'Adua" <https://www.vanguardngr.com/2010/04/onaiyekan-oyedepo-2-others-meet-yaradua/> accessed on 1st October, 2017.

[19] He said: There is the general notion that section 11 of the 1989 Constitution(similar to section 10 of the 1999 Constitution) makes Nigeria a secular nation, but it is not. See Fundamental Legal Issues in Nigeria: Essays in Honour of Andrew Obaseki, 1999).

1.3 Nigeria's Constitution and Secularism

Nigerian Constitution does not expressly pronounce itself as secular, but it is replete with provisions suggesting that all along it is intended to be a secular document.[20] It is the separation of religion from the state that is the most misunderstood and certainly misapplied criterion in Nigeria. Those opposing *Sukuk* specifically based their argument on this limb that the promotion of a "sectional religious financial policy" was a violation of the Constitution.[21]The Constitution of the Federal Republic of Nigeria gave "God" a prominent place in its preamble. This is in contrast with what obtains under the constitution of India where the preamble categorically asserts that India is a "Sovereign Socialist *Secular* Democratic Republic",[22] leaving no doubt as to the character of the constitution. It is the mention of "God "in the Nigerian counterpart that is argued to have taken from the constitution the flair of secularism. It was contended that had it been the intention of the drafters to divorce the affairs of state from religion, the mention of God would have been avoided.[23] This position is hardly convincing considering that countries like the United Kingdom where religion is seen to prominently play roles in state affairs is widely acclaimed a secular nation.[24]

Remarkably, and in sharp contrast with its invocation of God, the Constitution in its attempt to exert the idea of separation of state from religion, went ahead to prohibit the adoption of a state religion.[25]While Nigerians are allowed to practice their various faiths, they must not bring it into the government; the idea is that religion must not be allowed to influence public policy. So that religion as a private matter does not stray into public affairs. It, therefore, promotes religious equity based on governmental non-involvement in religion.

[20]Similalry, although the United States is widely considered secular, the constitution does not specifically mention anywhere that it is secular. However, the principles of secularism are well articulated in its provisions. See the US Constitution<https://www.whitehouse.gov/about-the-white-house/the-constitution/> accessed on 22[nd] August, 2017.

[21] Adepegba, A., Op. Cit.

[22]The 42nd Amendment of the Constitution of India enacted in 1976 <http://lawmin.nic.in/coi/coiason29july08.pdf>accessed 12 October, 2117.

[23]James Pam, "A Review of the Secularity of the Nigerian Constitution" http://kingdomnewsng.com/articles/132-a-review-of-the-secularity-of-the-nigerian-constitution accessed 12[th] October, 2017.

[24]Anthony Bradney, "Religion and the Secular State in the United Kingdom"<https://www.iclrs.org/content/blurb/files/United%20Kingdom.1.pdf> accessed 12[th] October, 2017.

[25] Section 10 of the Constitution of the Federal republic of Nigeria (CFRN), 1999, as amended.

The Constitution provides that no one shall be discriminated against on the ground of religion, among other things.[26] The most important determinant of the secular status of every nation is the guarantee a constitution is able to provide for the practice of religion. This, the Nigerian constitution does by providing that, "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".[27] The right is however not absolute because, in order to effectively guarantee rights of all to practice faith, the state must define the extent to which such rights are curtailed so as not to infringe on the rights of others while at it. Hence, the right may be circumscribed by any law that is reasonably justifiable in a democratic society, in the interest of defence, public safety, public order, public morality or public health; or for the purpose of protecting the rights and freedom or other persons.[28]The constitution clearly encapsulates two of Rajeev Dhawan's standard of constitutional secularism which disaggregates secularism: religious freedom and celebrating neutrality. However, in practice, rather than state distancing itself from, and regulating religion in Nigeria, it is the religion that is gradually coming back to dictate to the state. It is in this context that some hold that "the idea that religion can be neatly separated from the affairs of the state is not feasible in Nigeria".[29]In order to deliberately make secularism less popular, the principles of secularism are often misread to serve a political purpose. Some hold the view that it abrogates religion, thereby making it appear hostile while promoting atheism. What the Nigerian constitution does is rather than exalt irreligion; it refuses to identify with one particular religion. Like every concept, Nigeria can be said to be secular only to the extent of the character of its constitution.

1.4 "Islamisation" and the Fear of Domination

The fear of domination has always characterized the Nigerian political space. It took different shapes like an amoeba, depending on the context and purpose of its usage. It is sometimes meaningless and frequently used mischievously to achieve religious and political agenda.[30]So, what is this "Islamisation"? In its simplest form, it means "to convert to Islam", "to bring into

[26] Section 15(2) Ibid.
[27] Section 38 (1). Ibid.
[28] 45(1) (a) and (b). Ibid.
[29]Muritala, Kewuyemi Kareem. "Islamic Banking and the Question of Secularism in Nigeria", p.78https://www.ajol.info/index.php/ijrs/article/view/141441 acccessed 20[th] august, 2017.
[30] Abbas. F. (2017). "Nigeria: Islamisation or Christianisation?" <http://thenationonlineng.net/nigeria-islamisation-christianisation/> accessed on22/11/2017

a state of harmony or conformity with the principles and teachings of Islam", or to "give an Islamic character or identity to"[31] individual, group, or an idea. In this evangelical context, there is nothing harmful about Islamisation, since, like any other belief and idea, there is the implicit drive to propagate it. Some contend that this has always been part and parcel of the agenda of Islam, and the Muslims have every right to pursue such an agenda, as do Christians.[32]A senior clergy once asked his fellow Christian leaders, "it's part of Islam to Islamise; is it not part of our own programme too to evangelise?" He then went ahead to endorse the idea of Islamisation just as Christians also have it as their agenda to Christianise.[33]That a state like Nigeria should not completely indulge in the "doctrinaire rigidity" of the state completely dissociating itself from religion.[34]Still, in the extreme, some refer to a more violent parallel "Islamisation agenda in the context of Taliban in Afghanistan, Daesh in Syria and Iraq, and some parts of North Africa and the recent carnage of Boko Haram. But none of them can be realistically described as state actors and are located in predominantly Muslim states, actively opposed by the Islamic centred governments and populations.[35]

The burning question is, how does floating of *Sukuk* amount to the proclamation of Islam as a state religion? The Christian Association of Nigeria's (CAN) first charge against the issuance of *sukuk* bond was that it will lead to a situation whereby there are about "two laws for one nation as it shall also be construed in accordance with the Islamic law of *Mu'amalat maliyyah* in addition to the established laws of Nigeria".[36] This lacks merit judging from the fact that *sukuk* is now a global product and even the countries where the concept of secularism emerged have made regulations on *sukuk* and has not led to the dualisation of their laws. Germany was the first non-Muslim majority country to have issued sovereign *sukuk* by the State of Saxony-Anhalt in 2004.[37]Other countries to have followed include Britain, Hong Kong, Kenya, Germany, Luxembourg, South Africa, Italy, Tanzania, Russia, China, Singapore, France, Japan, South Korea;[38] and there is yet a scintilla of evidence that these nations

[31] "Islamize" <http://www.dictionary.com/browse/islamize> accessed on on 22/11/2017

[32] Bishop Badejo says Christians should stop complaining about Muslims' Islamisation agenda if they refuse to 'christainize' See Ududiong, I. (2017) <http://www.pulse.ng/communities/religion/islamisation-catholic-bishop-says-muslims-have-every-right-to-islamise-nigeria-id7470652.html> accessed on11/ 19/2017

[33] Ibid

[34] Nwabueze, B. O.(2003) *Constitutional Democracy in Africa*, Spectrum Books, Ibadan, 2003.

[35] Worrey-Arthur, F. (2017) "Bugbears of Islamisation", <https://www.thisdaylive.com/index.php/2017/02/08/bugbears-of-islamisation/> accessed on 20/11/2017

[36] Adepegba, A., Op. Cit.

[37] Din. S. U.(2016) Conceptual and Structural Differences between Conventional Bonds and Islamic Sukuk .*Australian Journal of Business and Management Research New South Wales Research Centre Australia (NSWRCA), Vol.05 No.05*. 2016. p. 37

[38] France, Hong Kong, Japan, Singapore, and the U.K. all enacted specific legislation recognizing *Sukuk* as financial products and requiring supervisory approval for their origination by IBs. See IMF Executive

have been Islamised or negatively impacted by the product. Thus, even if Nigeria is practising the extreme brand of secularism, issuance of *sukuk* cannot be a violation of its secular philosophy. The existence of this modified bond structure only emphasises the right to participate in the major sectors of the economy[39] and of freedom of religion as enshrined in section 38 of the Constitution.

Another point raised by the opponents of *sukuk* issuance was that the International Monetary Fund (IMF) opined that the issuance of *Sukuk* by non-Islamic countries was a breach of the religious neutrality of the government of such states.[40] This was to suggest that the international organisation has taken an advisory stand against *sukuk*. The IMF is not a political organisation; it is improbable that any such statement will come from it. Sadly, no one has provided a specific reference as to when and where this statement was made. A probe indicates that, on the contrary, the IMF recently adopted a set of proposals on Islamic finance and called for a more comprehensive set of policies to ensure financial stability in countries with Islamic banking and support the sound development of the industry.[41]

Oyeniran captured the dilemma succinctly when he remarked that, "one may not be wrong to think that political and economic interests constitute ulterior motives in Muslim-Christian faceoffs in Nigeria."[42] A prominent legal practitioner even asserted that *Sukuk* bond was a legitimate means through which government could generate funds, as practised in many countries of the world.[43] The FGN added that it is an attempt to pull more resources to the pool through financial inclusiveness, by introducing a scheme that appeal to vast Nigerians who do not believe in the interest that money should gather interest.[44] The position taken against *sukuk* does not augur well with a society bedeviled by economic challenges. *Sukuk* is an innocent product caught up in the cross-fire between political interests clothed in religious garbs. The fear of domination by different groups within Nigeria has been expressed to varying degrees in the lifetime of the

Summary (2017), "Ensuring Financial Stability in Countries with Islamic Banking", <http://www.imf.org/en/Publications/Policy-Papers/Issues/2017/02/21/PP-Ensuring-Financial-Stability-in-Countries-with-Islamic-Banking> accessed on 20/11/2017

[39] S. 16(2) CFRN, 1999. See also Adegbite, K. (2012) Is Nigeria a Secular or Non-Secular State? Sovereign National Conference (SNC) Project, May 25th, 2012.

[40] Adepegba, A., Op. Cit.

[41] Shabsigh. G, et al. Islamic Banking Proposals Get IMF Approval. accessed from:<https://blogs.imf.org/2017/02/21/islamic-banking-proposals-get-imf-approval/> See also IMF Executive Summary (2017). Op. Cit.

[42] Oyeniran. P. A.. Op. Cit.. p. 35.

[43] Olawotin. O. (2017) 'Christianise' Nigeria too. Falana tells CAN". <https://www.premiumtimesng.com/news/top-news/244463-sukuk-christianise-nigeria-falana-tells-can.html> accessed on23/11/2017

[44] Adepegba. A. Op. Cit.

country. But the issuance of *sukuk* can hardly find any tangible basis for fear anywhere. Those opposed to *sukuk* have raised some points but have not succeeded in demonstrating how it is possible to Islamise Nigeria through a decision that makes economic sense to the benefit of all and sundry.

1.5 *Sukuk* and Conventional Bonds

According to the Securities and Exchange Commission (SEC), *Sukuk* refers to investment certificates or notes of equal value which evidences undivided interest or ownership of tangible assets, usufructs and services or investment in the assets of particular projects or special investment activity using *Shari'ah* principles and concepts approved by the SEC.[45]The main features of *sukuk* are that it must comply with principles of Islamic commercial jurisprudence and the venture must be *halal*.[46] Thus, an investment in a brewery or any business that is in conflict with the *Shari'ah* will not be tagged as *sukuk*. Similarly, because *Shari'ah* encourages commercial activities based on full disclosure and honesty, it forbids any speculative undertaking known as *Gharar*. The goal of every financial system is to practically solve existing problems. Both *sukuk* and conventional bonds are essentially vehicles for the mobilization of funds from surplus spending units to shortage units such as governments and corporations. Conventional bonds have been tapped for centuries and somehow *sukuk* has come to supplant itself as a viable parallel based on Islamic jurisprudence. The differences between *Sukuk* and conventional bonds lie in the very nature or purpose of funding as well as the way *Sukuk* is structured. The two have been succinctly contrasted in the following words:

> In the case of conventional bond case, the bond issuer creates a debt instrument in which the payment of principal and interests are both guaranteed. If the issuer defaults on either or both of these cash flow bondholders can bring a lawsuit against it and collect their rights as much as possible. On the other hand, if the bond issuer generates a huge amount of profit by utilizing the raised funds, bondholder's returns are still the same. The reason is, the bondholder's return is known and predetermined and are independent of the bond issuer's potential profit...The fact that in the

[45] Securities and Exchange Commission (SEC), Rules on Sukuk Issuance in Nigeria

[46] *Halal* is an Arabic word meaning lawful or permitted by Allah. Siddiqi, M.J. (1983), Issues in Islamic Banking, Economic Series 4, Leicester, Islamic Foundation, p. 9.

> structure of conventional bonds the underlying asset is money and in the Sukuk is an asset, has great religious differences but virtually no financial differences.[47]

Mainly, *Sukuk* and bonds are two kinds of financial instruments; despite their differences, they share similar responsibility of fund mobilisation from surplus units to shortage units. *Sukuk* can resemble conventional bonds by some of its features, but it is technically neither debt nor equity. It is complex to understand the exact nature of *sukuk* and differentiating them from bonds.[48]In the case of *sukuk,* income is generated from the assets. Whereas; in conventional bonds, income (scheduled and often fixed) is generated from a debt instrument.

Conventional bonds have a guaranteed feature in which creditors guarantee capital payment with the capital charge to the borrowers. Its primary objective is to gear up the issuer's leverage through a loan relationship; this loan relationship implies a contract with the characteristic of earning money on money.[49] These cash flows are independent of the amount of profit or loss that bond issuer has earned from utilizing the funds that were raised through issuing bonds. In contrast, *Sukuk* certifies asset ownership passed from the issuer to *sukuk* holders in the form of *Shariah*-compliant contracts such as lease, partnership or sale contract which originates from business and trade activities. The specific contract of exchange of *Shariah*-compliant asset will determine the *sukuk* structure. Such contracts can be made through the sale and purchase of an asset based on deferred payment, leasing of specific assets, and participation in joint-venture businesses or agency-based.[50]Their return on invested capital is not guaranteed and may have fixed or variable rates of return.[51]The return can be either derived from underlying asset attached to the venture or from sales, lease or

[47] Afshar, T. A. (2013) Compare and Contrast Sukuk (Islamic Bonds) with Conventional Bonds, Are they Compatible? *The Journal of Global Business Management*, Vol. 9 No. 1, February 2013, p. 49

[48] Yousaf, A. J. (2014). A Comparative Analysis of Sukuk and Conventional Bonds. Springer proceedings in complexity, 417-438

[49] Nathif, J. A. and Thomas, A. (2004). *Islamic Bonds: Your Guide to Issuing, Structuring, and Investing Sukuk.* London: Euromoney Book, as quoted in Din, S. U.(2016) Conceptual and Structural Differences between Conventional Bonds and Islamic Sukuk ,*Australian Journal of Business and Management Research New South Wales Research Centre Australia (NSWRCA), Vol.05 No.05*, 2016, p. 37

[50] (Shahida and Sapiyi 2013)

[51] Afshar, T. A., Op. Cit., p.47

partnership or business ventures.[52] It is important to note that equity instruments can also take the form of *sukuk*, depending on how they are structured.[53]

1.5.1 The Regulatory Framework for Issuance of *Sukuk* in Nigeria

Sukuk, like conventional bonds, is regulated by the SEC. Section 313(1) of the Investments and Securities Act of 2007 states that the SEC "may, from time to time, make rules and regulations for the purpose of giving effect to the provisions of this Act and may in particular and without prejudice to the generality of the foregoing provisions, make rules and regulations".[54] Pursuant to Section 313(6)[55] and in recognition of the development of Islamic finance in Nigeria, the SEC issued new rules and regulations to accommodate *sukuk* features in Nigeria.[56] The rules, however, do not pretend to be sufficient, as it defers to other regulatory agencies, such as the Central Bank of Nigeria (CBN) regulations and other extant laws.[57] Before any proposal is submitted to the SEC, CBN regulations must be complied with.

In 2012 the Nigerian Stock Exchange (NSE), also introduced an Islamic index in conjunction with Lotus capital called NSE-Lotus Islamic Index. This was to further boost the *Sukuk* framework.[58] All these laws made overtime to strengthen the regulatory environment for *sukuk* to thrive were not opposed until recently when CAN declare that "every law that has been promulgated to back the *sukuk* issuance and promote an Islamic banking system in Nigeria is *ultra vires*, illegal, null and void."[59]

1.5.2 Prospects of *Sukuk* in Nigeria

Sukuk is now a global product being issued by several countries and gaining momentum with widespread acceptance and popularity in the global investment scene.[60] Between 2003 and 2013 the *sukuk* market grew geometrically

[52] Din, S. U.(2016), Op. Cit., p.37
[53] Naza, J.K. (2015). Regulatory and financial implications of Sukuk's legal challenges for sustainable Sukuk Development in Islamic Capital Market. In H A El-Karanshawy et al (Eds.), *Ethics, governance and Regulation in Islamic Finance,* Doha, Bloomsbury Qatar Foundation, p.39
[54] Securities Act, 2007
[55] Ibid
[56] Of February 8, 2013.
[57] Rule 15.0, SEC Rules, Op. Cit.
[58] Oseni, U. A. and Abdullahi, S. I. (2013), Sukuk as an Alternative Source of Funds for Nigerian Government. In: Dandago, K. I. and Mohammed, A. D. (Eds), Essentials of Islamic Banking and Finance in Nigeria, Benchmark Publishers Limited, Abuja.
[59] Adepegba, Op. Cit.
[60] Din, S. U.(2016), Op. Cit.

from about $10 billion to about $270.Since then, *sukuk* has been growing, on average, by 17 percent a year.[61]These developments, during the short history of Islamic finance point to great opportunities for Islamic finance and capital markets. The global Islamic financial system is projected to reach $6.5 trillion by 2020, according to a report by the International Financial Service Board (IFSB), with Asia in the lead.[62] Nigeria could not afford not to tap into this virile market at a time it is diversifying its economy and in desperate need of funds to finance its infrastructural revival. Moreover, the *sukuk* issues provide a far greater return and financial security than the convention bonds. Bond issuers also may enjoy from a broader market place for their bond products. The *sukuk* issues are available to all financial institutions and investors regardless of their religious background, beliefs, and faith.[63]

Nigeria has the highest population of Muslims in Africa. Over half of its estimated 180 million populations are Muslim.[64] With this population, it is reasonable to predict a bright future for *sukuk*. This explains why the recent FGN bond was oversubscribed[65] and billed to last for seven years and to be tradable on the Nigerian Stock Exchange. The *sukuk* represents the form of alternative funding the FGN is looking to, in order to raise as much as $5 billion from the foreign debt markets.[66]The FGN*sukuk* is not the first; it is only deepening a pattern started by the Osun State Government in 2013.[67]The Osun State *sukuk* (infrastructure funds) was listed in the Nigerian Stock Exchange and given an "A" rating[68] and oversubscribed at 60%. This was illustrative of a promising growth rate.[69]

In a similar vein, this provides an opportunity for attracting foreign direct investment (FDI) from the Middle East and South East Asia where a lot of investors have funds waiting to be invested in *Shari'ah* compliant financial products.[70] A member of IILM Nigeria can benefit enormously in attracting

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[61]Hussain, M. et al. (2015) An Overview of Islamic Finance African, European, and Middle East and Central Asia Departments, IMF Working Paper (WP/15/120, Zeine Zeidane, June 2015)

[62] CBN Consolidates on Financial Inclusion with Non-Interest Banking, Leadership<http://www.invest-nigeria.com/cbn-consolidates-financial-inclusion-non-interest-banking/>15th September, 2017.

[63]Afshar, T. A., Op. Cit., p.51.

[64] CBN Consolidates on Financial Inclusion With Non-Interest Banking, Op. Cit.

[65]The Sukuk was oversubscribed by 5.87 per cent. See Stella Mbah, "FG's debut Sukuk Offer Oversubscribed"https://www.thebusinesspost.ng/economy/fgs-debut-sukuk-offer-oversubscribed on 18th October, 2017.

[66]Wabara, C., Op. Cit.

[67]Osun State had in 2013, issued 10-billion-naira worth of sukuk. The bond was successfully completed and over-subscribed by 20%.

[68]By the Local Credit Rating Agency Agusto & Co.

[69]See <http://www.kordcapital.com/ISLAMIC%20FINANCE%20ARTICLE.pdf>on 20th, September, 2017.

[70]Umar, B. A.Overview and Conceptual Issues of Non-Interest Banking in Nigeria, july – September 2011Volume 35, No. 3

investments to its nascent sukuk market. Since the inaugural $490 million *sukuk* launch in August 2013 and pursuant to the granting of an A-1 public rating by Standard & Poor's Rating Services, the IILM has issued a total $1.65 billion worth of short-term *sukuk* as at September 2014, and it has also lengthened maturities by auctioning six-month *sukuk* worth $400 million. This is indeed a market with endless potential.

1.6 Conclusion and Recommendations

From the analyses, it is clear that in theory, Nigeria may pretend it is a secular state but the reality is far different. The charge of Islamisation is based on the fear of perceived domination with no tangible basis. It serves as a tool always deployed to achieve certain predetermined political goals. Those who insist on pushing the narrative have failed to demonstrate how for instance, the issuance of *sukuk* can achieve the unchecked conversion of adherents of other religions into Islam. Since Islamic finance crept into Nigeria, there is no empirical evidence that any non-Muslim's interest has been remotely jeopardized by its existence. What is clear, however, is that many non-Muslims have found Islamic finance to be a convenient alternative to conventional finance. The *sukuk* seeks to deal with the issue of infrastructural deficit to the benefit of all Nigerians. It has the potential of also enhancing competition within the bond market, and ensures service delivery, and also play a role in the development of the real sector.

Beyond the outpour of emotions and the obsessive-compulsive drive by religious leaders to protect or promote their religion, *sukuk* is a healthy economic issue that should be embraced by all Nigerians. Because it will facilitate financial inclusion, drawing the hitherto stashed funds kept away from the financial stream by those who feel strongly about the interest conventional bonds thrive on, permit new globally recognised product in the financial system which will stimulate diversification, giving options to investors. The *sukuk* has the potential of attracting more than half of Nigeria's population into its stream of activities, thereby providing to the federal government and alternative source of funding to finance capital project for the benefit of all Nigerians irrespective of faith.

Secularism is an ideology positing that religion should not be the basis of politics, and in its most extreme form, faith should have no place in public life. Nigeria does, in fact, need to remain secular, since we have established that secularism is not the absence of religion in the state, or that a device for hostility against religion, rather, it seeks to give every religion a fair and equitable space for its adherents to practice their faith. Secularism is not about curtailing religious freedoms; it is about ensuring that the freedoms of thought and conscience apply equally to all believers and non-believers alike. It is the author's reasoned view that the western definition of secularism cannot fit Nigeria's social, cultural and religious set up. This is why in practice, the secular principle of absolute divorce of religious vestiges from politics is rather observed in violation. Even the western conception of secularism has nothing to do with denial of God or religion, but seek to preserve the religious neutrality of government and cultures. It cannot reasonably serve as a basis of the objection to the issuance of sukuk in Nigeria, because even the nations where the notion comes from have staggered into the *sukuk* market, and have also enacted legislation for the product to thrive. The laws supporting the issuance of sukuk in Nigeria are not in violation of the constitution in any way. They are laws validly passed by the National Assembly (NASS) and the subsidiary legislation flowing from them were validly issued within the competence of the regulatory authorities that made them. As such, only a court of competent jurisdiction can so determine the invalidity of these laws. As it is now, these subsidiary laws are in effect and unchallenged.

Based on the above findings, scholars and religious leaders have a very big task ahead of them. There is the need to work with a conception of secularism that does not presume hostility against religion. The Nigerian constitution ensures that religious organisations and groups are not discriminated against in the public domain. Secularity of the country should mean religious tolerance and equal treatment of all religious groups. This thesis should serve to guide Nigerian discussions on and around secularism and not the extreme form that is detested by both religions.

It is also recommended that whatever the situation, the Nigerian government must put in place a system of wide consultations before venturing to put out matters with religious bearing, no matter the benefit and good faith. The problems bordering on secularism and Islamisation charges have very little to do with religion but always readily provide each religion with the arms to overheat the polity. Hence, such a realisation should mean, rather than taking principled positions, some form of consultations should precede it.

Lastly, the legal framework for Islamic finance must be harmonized, as the standard best practice requires. It is easier to have a codified law to provide an explicit guide to those wishing to understand and exploit the product.