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TOWARDS THE ESTABLISHMENT OF ECCLESIASTICAL COURTS OF APPEAL IN NIGERIA

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1. **Introduction**

In the colonial amalgam called Nigeria, the largely Muslim Hausa Fulani in the North was fused with the predominantly Christian and traditional religious Igbo (Ibo) in the East and what Rotimi T. Suberu describes as the «religiously bio-communal Yoruba» in the West. «The rest of the population is variously believed to be made up of between two hundred and four hundred "ethnic minorities", ranging in size from several thousands to a few million and comprising adherents of Christianity, Islam and traditional indigenous religions»[1]. Nigeria got its independence in October 1, 1960. Nigeria has a current population of about 191.171.052 based on the latest United Nations estimates[2]. Religious practice in Nigeria is as varied and

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[1] R.T. Suberu, *Federalism and Ethic Conflict in Nigeria*, Washington (DC) 2001, 3.

[2] http://www.worldometers.info/world-population/nigeria-population/ [access: 16/5/2017]. *Pew*'s survey found 52% Muslim, 46% Christian, and 1% other Adherents. Cf. Z. Pierri – A. Barkindo, «Muslims in Northern Nigeria: Between Challenge and Opportunity», in *Muslim Minority-State Relations. Violence, Integration, and Policy*, ed. R. Mason, New York 2016, 133.

as diverse as the population itself. As a result, this creates a complex situation which derives from its heritages of indigenous religious traditions, Islam, and Christianity.

The demographics of the country suggest that about half 50-52% of the population of the country is Muslim, while 40-47% is Christian, and roughly 10-12% practice traditional African and other religions. None of these figures, however, has been accurately and independently validated. Among other reasons for this is the fact that in Nigeria, population figures are used to determine regional development, which makes it always a politically charged subject matter. Regionally, there is a perceived cultural, economic, and political split between Nigeria's North and South, which is also a direct legacy of British colonial policy and uneven regional development[3].

While the North is largely Muslim and the South is largely Christian, there is a sizeable Christian minority in several Northern states (mostly migrants from the Southern areas of the country, but also sizeable numbers of indigenous Northern tribes that resisted Islam). The population of northern Christians is fast shrinking as Christians flee from persecution and violence in the Northern part of the country. The «Middle Belt», an area encompassing six states, is populated largely by ethnic minorities and is also highly religiously diverse but the larger being Christian[4]. There are over 120.000 registered independent Churches in Nigeria, each with its own peculiar Constitution and canons[5].

The central argument of this paper is that considering the secular nature of Nigeria as a political entity which does not operate a State Religion, there should be a resolute effort to maintain the unadulterated character of the

[3] «Nigeria», *Nigeria Country Profile (PDF)*, n.d., https://rlp.hds.harvard.edu/nigeria-overview [access: 24/5/2017].

[4] «Nigeria» (cf. nt. 3).

[5] http://www.indexmundi.com/nigeria/demographics_profile.html > Religions 2015 [access: 22/5/2017].

National Constitution as such. This would imply within this context that the Sharia court inserted therein should be expunged from the Constitution of the country to maintain its purity. Otherwise, a similar provision of an ecclesiastical court for Christians should be legalized for the sake of the constitutional right to equality of all the citizens. In this case, however, the various religious communities should have and operate their various religious courts without the State sponsorship or involvement, so long as their operations do not conflict with the laws of the Nigerian State.

What follows is a presentation of the significance of the bill for «Ecclesiastical Courts of Appeal» for Christians in Nigeria; the merits and demerits which would guarantee the desirability and feasibility of the bill and the future prospects of such a bill in a secular state as Nigeria with some recommendations for a way forward.

2. **Understanding Nigeria's Constitutional Secularity**

2.1 *The Constitution of Nigeria*

The Federal Military Government of Nigeria, on 5th of May 1999, by Section 1 of the Constitution of the Federal Republic of Nigeria (Promulgation) Decree No. 24 of 1999 promulgated the 1999 Constitution, declaring it to be the collective resolve of all the peoples of Nigeria, «to live in unity and harmony as one indivisible and indissoluble Sovereign Nation under God»[6]. Indeed, Section 10 of the same Constitution states that «the Government of the Federation or of a State shall not adopt any religion as State Religion». As such, Nigeria is a secular State, meaning that Nigeria is neither theocratic nor an atheistic State. Even though it prohibits a State Religion, Nigeria is essentially religious, and the different religions should be equal before the Law.

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[6] «The Preamble» to *1999 Constitution of the Federal Republic of Nigeria and Fundamental Rights (Enforcement Procedure) Rules with Amendment (2011)*.

In as much as the Constitution prohibits State Religion (Section 10), it guarantees freedom of Thought, Conscience and Religion. This includes «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» (Section 38 [1]). It is consequently the Constitutional right of every Nigerian to enjoy freedom of religion including its «practice and observance». The same Constitution however provides the Muslim the Constitutional right to practice his/her faith and vindicate his/her rights in the Sharia Courts of Appeal in the Federal Capital Territory and in the States adherent to it. Section 260 (1) of the Constitution says: «There shall be a Sharia Court of Appeal of the Federal Capital Territory, Abuja», while Section 275 (1) says: «There shall be for any State that requires it a Sharia Court of Appeal for that State». The Courts have «appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law» (Section 262 [1], 277 [1])[7]. So constitutionally, the Sharia Courts of Appeal have jurisdiction only in civil proceedings in matters of Islamic personal law. The Courts have no criminal jurisdiction. For inferior Courts, the Constitution provides «for such other Courts as may be authorised by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws» (Section 6 [4][k]). John Umar Gangwari relates that besides the fact that the State Houses of Assembly have Constitutional powers to make laws establishing Sharia Courts for the States, they can equally invest the courts with civil or criminal jurisdiction, or both[8].

[7] The Constitution of the Federal Republic of Nigeria 1979 had similar provisions empowering the State Houses of Assembly to make laws establishing inferior courts (Section 6 [4] [j]). The situations of the established courts are quite extensive today.

[8] J.U. Gangwari, «The Sharia Saga in Nigeria: Religion or Poli-

Sharia or Islamic law as such has since 27 January 2000 been operative particularly in the Northern States of Nigeria. The Constitution of Nigeria which is «under God»[9], therefore, provides the Muslim with the Constitutional right to practice and observe his faith by, among other things, vindicating his rights in the Sharia Courts of Appeal in the Federal Capital Territory and in the States. Thus, in Nigeria, Muslim Sharia Courts are Constitutional and are functional, while there are not equivalent Courts for Christians in the Constitution of the Federal Republic of Nigeria. It is taken for granted that the adherents of the Traditional religions are in the minority.

The Catholic Bishop of Sokoto Diocese, Matthew Hassan Kukah, on 22 November 2015, comments on the uniting values that the National Constitution holds for its citizens, especially that of freedom of worship, and the right not to be discriminated against on the basis of religion. He notes: «The Constitution, which is what holds us together, has assured us that Nigeria aspires to the ideals of a State where there is no favouritism of one religion over the other, or where people are discriminated against on the basis of religion [...]. Whatever may be the case, we are running a Democracy not a Theocracy»[10]. Justice C.E. Kalajine Anigbogu underscores the reason behind the building in of provisions for the Islamic courts in the Constitution of the Federal Republic of Nigeria. He avers that:

> There was the growing feeling among the Muslim community or adherents that the Nigerian Constitution and indeed the body of laws as received from the Colonial masters was Christian in orientation. This notion was based on the fact

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tics? Some Constitutional and Legal Considerations», *Jos Studies* 10 (2001) 2.

[9] «The Preamble» (cf. nt. 6).

[10] M.H. Kukah, «Blame Northern Nigeria Northern Elites for Boko Haram», http://www.nairaland.com/2771007/blame-northern-nigeria-muslim-elites-boko [access: 25/5/2017].

> that Nigeria received her independence from Great Britain, a Christian country, and as such, to the average Muslim, therefore, all the laws and the Constitution were Christian in nature and did not meet the needs and aspirations of the Muslim population in Nigeria[11].

Hence, Anigbogu affirms that «the colonial legal system upon which Nigeria was created grew gradually out of the United Kingdom's ecclesiastical laws, in response to the demands of modernity and democracy»[12]. Therefore, in an attempt to strike a balance, the legislators made equivalent and elaborate provisions for the Customary Court of Appeal for any States which desired it. Accordingly, Chapter vii, pt. 1f, and pt. IIc, of the Constitution, in Sections 265-269, and 275-279, provide for the establishment of the Appeal Courts at Federal and States levels respectively. At the Federal level, Section 267 provides that the Court shall: «in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, exercise appellate and supervisory jurisdiction in civil proceedings involving questions of Customary law». At the level of the States, Section 282 (1) and (2) provide that: «A Customary Court of Appeal of a State shall exercise appellate and supervisory jurisdiction in civil proceedings involving questions of customary law». However, Gangwari argues that:

> The Northern Nigeria Penal Code which was modelled on the Indian Penal Code is substantially an Islamic Law. Courts in Northern Nigeria apply the Penal Code. Until very recently, almost all Area Courts were manned by Islamic Khadis or Alkali who applied Islamic Law in adjudicating cases even

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[11] C.E.K. Anigbogu, «Canon/Ecclesiastical Law and the Nigerian Constitution», http://consciencetriumphs.com/canonecclesiastical-law-and-the-nigerian-Constitution/ [access: 25/5/2017]. Honorable Justice C.E.K. Anigbogu is a Senior Judge emeritus of the State High Court of Anambra State, Nigeria.

[12] C.E.K. Anigbogu, «Canon/Ecclesiastical Law» (cf. nt. 11).

where litigants were non-Muslim. In some cases even Christian marriages were nullified by Area Courts which applied Islamic Law instead of Native Law and Custom. Some Northern States have put some Chief Imams on salary and even provided official vehicles for them without extending similar gestures to Bishops in the same States[13].

2.2 *Personal Status Law*

Personal Status Law is the legislation relative to family life, marriage, separation, divorce, child custody, inheritance, etc. This legislation has direct impact on people's lives, men, women, and children.

Countries which could be described as secular states, that is, without a state religion, would regulate and protect the public and private life of the citizens through its Constitution. In which case, the National Government with its Constitution and codified laws regulate and protect the life of the citizenry, while dealing with issues regarding the personal status, according to properly codified laws which treat every citizen equally. This would forestall reliance on the arbitrary decisions of religious courts, authorities and clerics. On the other hand, in countries which operate a state religion, such as in predominantly Muslim countries or Christian countries, Personal Status Law is often based on and regulated by Religious Laws, Islamic Sharia Laws, or otherwise. In these countries, Personal Status Law is determined by religious courts and clerics.

The right to private and family life is protected and regulated by the Nigeria Constitution (Section 37). Since the Nation does not have a state religion, but instead promotes freedom of religion and conscience, it does not and is not meant to differentiate between the various religious communities.

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[13] J.U. Gangwari, «The Role of Religion in Politics: The Middle Belt Perspective», *Jos Studies* 10 (2001) 45. The Nigerian Penal Code was promulgated as Penal Code Law, Cap. 89 *Laws of Northern Nigeria* 1963. The Penal Code has always been the Criminal Law of Northern Nigeria.

The country promotes the national values by the National Laws. Nigeria recognizing the pluralistic nature of her society appears to have embraced democratic governance which is functional in the first world developed countries.

2.3 *The Constitutional Secularity*

As stated above, constitutionally, Nigeria prohibits a state religion. Though the Nigerian Constitution does not use the phrase «secular state» to describe its religious situation, it is *de facto* a secular state. Being a secular state, it accords right to freedom of worship to the citizens in their multi-faith society. The interpretation, understanding and implementation of the secularity of the Constitution of Nigeria appear to play key role in resolving the conflicts that play out.

To what limit should the State interfere with religious matters in the country? The Catholic Bishops' Conference of Nigeria issuing a statement, «Religion and State in Nigeria»[14] on the occasion of the April 2014 National Conference, underscored some of the «dangerous ambiguities and confusion» that the country has been battling with. The Catholic Bishops, note that Nigeria is neither a godless country nor a religious State whereby a majority religion is made the official religion of the country[15]. The Catholic Bishops' Conference of Nigeria concludes from the constitutional provisions in the 1999 Constitution that Nigeria is not a secular country in the classical sense of a «secular state», even though the Constitution presupposes and provides for equity for all citizens in the Constitution regardless of their religion[16].

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[14] Catholic Bishops' Conference of Nigeria, *Religion and State in Nigeria: A Statement of the Catholic Bishops' Conference of Nigeria on the National Dialogue Conference*, April 4, 2014, Abuja 2014.

[15] Catholic Bishops' Conference of Nigeria, *Religion and State* (cf. nt. 14), no. 3.

[16] Catholic Bishops' Conference of Nigeria, *Religion and State* (cf. nt. 14), no. 2b.

The Bishops' statement underlines the risks of the multi-religious option. The multi-religious experiences of Lebanon and Syria remind all of the reality and dangers of the multi-religious option especially considering the propensity of «the majority religion to practically take control and at best merely to tolerate others»[17]. This form of multi-religious dynamic is present in Nigeria, as demonstrated by the *sharia'* law controversies and practices in northern Nigeria. Hence, a multi-religious option that runs on tyranny of the majority «should be discouraged and discontinued in its many forms»[18].

The Sharia courts legalised in the Nigerian constitution are as well being sponsored by the State government. The sponsorship, financial and extra-financial aid given to these religious courts by the State send out discriminatory signals against other religious groups in a *de facto* constitutionally secular State. Nigeria's constitutional provision of civil courts is thus rendered ambiguous by the presence of State-sponsored religious courts.

Raymond Aina decries an ambivalence of Islam and Christianity to the constitutional secularity[19]. Disregard for the right to freedom of Thought, Conscience and Religion enshrined in the Constitution[20] leads to clash between custom and individual right and integrity. This occurs in forced conversion, honour killing because of change of religion, discrimination against one or those who convert-

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[17] Catholic Bishops' Conference of Nigeria, *Religion and State* (cf. nt. 14), no. 6.

[18] Catholic Bishops' Conference of Nigeria, *Religion and State* (cf. nt. 14), no. 6.

[19] R.O. Aina, «Killing for God in Nigeria: Looking Forward by Looking Backward», in K. Krämer – K. Vellguth, ed., *Religion und Gewalt: Konflikt- und Friedenspotential*, Theologie der Einen Welt Band 14, Freiburg 2018, 137.

[20] Cf. *1999 Constitution of the Federal Republic of Nigeria*, Section 38.

ed to another religion or refuses to convert to a dominant religion[21]. Nigeria's Constitution equally forbids denial of right to religious assembly (Section 38). Specifically, there is a guarantee for freedom from compulsorily attending religious ceremonies and receiving religious instructions if these are different from one's religion or unapproved by one's parents or guardian (Section 38.2).

It has been observed that in some northern states and in some faith-based schools, some constitutional rights are disregarded[22]. In the Faculties of Law in many Federal Universities, Islamic Law is included in the curriculum of studies, but there is no similar provision for Canon Law. Even in the Southern part of Nigeria, in some faith-based schools, there is rarely any provision for another mode of worship apart from that of the school's proprietor.

There is an apparent *de facto* attitude of various religionists to place higher premium on their religion over the National Constitution. Clashes of interpretations of Constitutional provisions, especially about sections 10, 38, 39 (right to freedom of expression), 40 (right to peaceful assembly and association), 41 (right to freedom of movement), 42 (right to freedom from discrimination), and 43 (right to acquire and own immovable property anywhere in Nigeria) normally lead to clashes and are trashed out on the streets, not in the courts.

It was in the midst of these and similar situations that on 6th December 2016, the Nation Newspapers carried a news item that a bill for the establishment of Ecclesiastical Court of Appeal in Nigeria had passed second reading.

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[21] R.O. Aina, «Killing for God in Nigeria» (cf. nt. 19), 138.
[22] J.U. Gangwari, «The Role of Religion» (cf. nt. 13), 2.

3. **The Bill for Ecclesiastical Appeal Courts in Nigeria**

3.1 *The Development of the Bill*

The progress of the proposal for the establishment of Ecclesiastical Courts in Nigeria has been a gradual one. On January 10, 2001, John U. Gangwari addressing the Presidential Committee on the Review of the 1999 Constitution at the University of Jos, advocates for Constitutional and legal recognition to Canon Law and Ecclesiastical Courts or Tribunals if Sharia Law and Islamic Courts are allowed in the Nigeria Constitution[23].

On July 17, 2013, an erstwhile President of Nigerian Bar Association, NBA, Mr. Olisa Agbakoba (SAN), threatened to sue and eventually sued the National Assembly and Attorney-General of the Federation over the absence of Christian and Ecclesiastical Courts in the 1999 Constitution. Agbakoba, in his petition entitled «Establishment of Ecclesiastical Courts», argued that that was a violation of Section 42 of the 1999 Constitution of the Federal Republic of Nigeria, which prohibits discrimination on account of religion. He equally observed that there was no provision made for Christians to have their religious and spiritual matters adjudicated by persons adequately learned in Ecclesiastical laws and biblical jurisprudence. Agbakoba claimed that the «Islamic and Customary practitioners are well recognised and accommodated in the Constitution by the establishment of the Customary and Islamic court systems in Sections 260, 265, 275 and 280». He noted however, that there is no corresponding provision for Christians or Ecclesiastical Courts, and therefore, «Christians are forced to resort to Customary and High Courts which are manned by persons with little or no knowledge of Ecclesiastical law and jurisprudence». He thereby recommended that in the «present Constitution alteration process, provision be made for the establishment of Christian and Ecclesiastical

[23] J.U. Gangwari, «The Role of Religion» (cf. nt. 13), 5.

Courts», since Nigeria is a multi-religious country and faith should be personal. He further affirmed:

> I believe matters of faith should not be contained in the Constitution as provided by Section 10, which prohibits state religion. […] But if we must retain customary and Islamic law systems, and I have nothing against this, then provision must be made for Christian/Ecclesiastical Courts.

He continued: «it occurred to me that it may well be an oversight that the present system violates Section 42 of the 1999 Constitution which prohibits discrimination on account of religion which is why I am giving this notice»[24]. Unfortunately, all the above claims were dismissed by Justice C.J. Aneke, of the Federal High Court in Lagos, Nigeria, in his judgement on October 5, 2015, for lack of sufficient proofs for the introduced claims[25].

At the 2014 National Conference, one of the items that formed the agenda for the debate was the establishment of Ecclesiastical courts in Nigeria. The promoters of the proposal focused on Section 10 which constitutionalized Sharia Courts for Muslims. Such system, they highlighted, was tantamount to discrimination and prejudices outlawed in Article 10 of the Nigerian Constitution. According to them, this translated into a situation whereby the State Constitution favours one religion above another. The representative group argued that since Nigeria's constitution provides for Sharia Court of Appeal which adjudicates on Islamic religious matters for the Muslims, there should be an equivalent provision for Ecclesiastical Court of Appeal to adjudicate on Christian religious matters for Christians. This is a way to balance the lop-sidedness in the Constitution.

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[24] https://www.vanguardngr.com/2013/07/agbakoba-threatens-to-sue-nass-with-suit-over-ecclesiastical-courts/ [access: 4/10/2017].

[25] http://ofcounselnigeria.com/court-dismisses-suit-seeking-creation-of-christian-courts/ [access: 4/10/2017].

An alternative proposal was however made that the State should abrogate the Sharia law from the Constitution so that only the provisions of the common law will be in force. Nothing was heard about this proposal after the 2014 National Conference till 6 December 2016 when the bill for the establishment of Ecclesiastical Courts of Appeal passed the second reading.

3.2 *The Nature of the Bill*

On 6th December 2016, a bill[26] for an act to alter the 1999 Constitution of the Federal Republic of Nigeria, intending to provide for the establishment of Ecclesiastical Court of Appeal of the Federal Capital Territory, Abuja, and the Ecclesiastical Court of Appeal of the 36 States of the Nation, and for Related Matters passed second reading at the National House of Representatives. The lawmaker avers that the amendment bill «conforms with and activated Section 37(1) CFRN 1999 (as amended), which guarantees the right of every citizen to freedom of Thought, Conscience and Religion, including freedom to propagate his religion or belief in worship, teaching, practice and observance».

The bill, sponsored by Gyang Istifanus Dung and eight lawmakers[27], aims at altering the Constitution of the Federal Republic of Nigeria (as amended) to provide for the establishment of Ecclesiastical court of Appeal of the Federal Capital Territory, Abuja, and the Ecclesiastical Court

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[26] *The Nation Newspaper* 11/3789 (2016) 5; See also www.theNationonline, Wed, 7/12/2016. The bill itself cannot be found on the website of the National Assembly, Abuja (www.nass.gov.ng).

[27] The bill was sponsored by nine lawmakers: Hon. Gyang Istifanus Dung; Hon. Gbefwi Gaza Jonathan; Hon. Sunday Marshall Katung; Hon. Yusuf Ayo Tajudeen; Hon. Johnbull T. Shekarau; Hon. Engr. Solomon Bulus Maren; Hon. Timothy Simon Golu; Hon. Kwewum Rimamnde Shawulu; Hon. Shiddi Usman Danjuma. It is noteworthy that all but one of the nine sponsors of this bill are from the Northern part of Nigeria.

of Appeal of the 36 States of the country. It seeks to provide for the functions and jurisdiction of the Courts, as well as the qualification, appointment and tenure of the Cardinals of the Ecclesiastical Courts. The Ecclesiastical Courts when they are instituted «shall complement the regular courts in adjudicating matters relating to the tenets of the Christian faith between individuals and groups that yield and submit to its jurisdiction»[28].

3.3 *Qualification, Appointment and Tenure of Cardinals*

On qualification and appointment and tenure of the Cardinals, the bill recommends that

> Judges (Cardinals) of the Ecclesiastical Court shall be drawn from those learned in law and shall be required to administer justice in accordance with the Christian faith and the law of the Nation. The qualification, appointment and tenure of the Grand Cardinals and Cardinals are provided for in the new Section 270B (1 to 5)[29].

3.4 *Jurisdiction*

On the jurisdiction of the bill, it provides that:

> The Ecclesiastical Court shall exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Ecclesiastical Law and Christian Personal Law as provided for in the new section 270B(1)-(2) including:
> (a) any question of Christian Personal Law regarding marriage concluded in accordance with that law; including a question relating to the validity or dissolution of such marriage or a question that depends on such a marriage and relating to family relationship or the guardianship of an infant;
> (b) where all parties to the proceedings are Christians, any question or Christian Personal Law regarding a marriage where no prior or subsequent customary or statutory marriage is con-

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[28] *The Nation Newspaper* 11/3789 (2016) 5.
[29] *The Nation Newspaper* 11/3789 (2016) 5.

tracted, including the validity or dissolution of that marriage, or regarding family relationship, a foundling or the guardianship of an infant;
(c) any question of Christian Personal Law regarding a will or succession where the endower, donor, testator or deceased person is a Christian;
(d) any question of Christian Personal Law regarding an infant, prodigal or person of unsound mind who is a Christian or the maintenance or the guardianship of a Christian who is physically or mentally infirm; or
(e) where all parties to the proceedings, being Christians, have requested the court that hears the case in the first instance to determine, that case in accordance with Christian Personal law, or any question[30].

3.5 *Alterations and Insertions*

The bill prescribes that:

In all, it has 14 alterations in section 6, 84, 185, 240, 246, 247, 288, 289, 292, and 318 of the Principal Act; It alters the second, third, sixth and seventh schedule of the Principal Act; It has four insertions in Part 1G, section 270A-E, Part 2D, section 285A-E and a citation[31].

3.6 *Conclusion of the Bill*

While arguing the bill, Gyang said:

The amendment will no doubt widen the scope of Jurisprudence, adjudication and legal practice in our Nation and bring to reality the administration of Ecclesiastical Christian tenets and law in adjudicating matters of personal Christian law and civil matters which shall be prescribed in the Rules of practice and procedure of the Ecclesiastical Court[32].

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[30] *The Nation Newspaper* 11/3789 (2016) 5.
[31] *The Nation Newspaper* 11/3789 (2016) 5.
[32] *The Nation Newspaper* 11/3789 (2016) 5.

The bill after passage was referred to the Special *ad hoc* Committee on the Review of the 1999 Constitution by the Speaker, House of Representatives, Mr. Yakubu Dogara.

3.7 *Comments on the Bill*

The bill in its outline seems *ad rem*, yet in its content, it appears defective:

– Aim of the bill: The bill aims at adjudicating matters relating to the «tenets of Christian faith», etc. The body of Christian values and norms which the bill expects to be entrenched in the Constitution is not yet articulated. The Christian Association of Nigeria has not yet produced a unified Code of Norms and values acceptable to Christians as a religion in Nigeria. A Code for Christian Personal Law, etc., is indispensable for Ecclesiastical Courts, since that is eventually the *Corpus* of law to be granted Constitutional powers.

– Characterization of the functionaries: The bill highlights the qualification, appointment and tenure of «Grand Cardinals and Cardinals» as Judges of the proposed Ecclesiastical Court. The terms «Grand Cardinals and Cardinal» are uncommon terms in the Christian domain. «Cardinal» is a term used only in the Roman Catholic Church to refer to a high official ranking next to the Pope. The office of the Cardinal is created by the Supreme Pontiff, the Pope, to assist and advise him in the government of the Universal Church.

– Creation of *Curriculum* of Christian Jurisprudence: A foreseen significance of this bill will be the creation of a long expected room for the inclusion of Christian Jurisprudence in the Education *Curriculum* of the Nation. This is to meet up with the intention of the amendment bill to

> widen the scope of Jurisprudence, adjudication and legal practice in the Nation and to bring to reality the administration of Ecclesiastical Christian tenets and law in adjudicating matters

of personal Christian law and civil matters which shall be prescribed in the Rules of practice and procedure of the Ecclesiastical Court[33].

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Emmanuel Ojeifo[34] comments that the issue of the bill for the establishment of Ecclesiastical Courts of Appeal in Nigeria borders on the relationship between religion and the Nigerian State. This he notes because the bill «seeks official legal backing for the establishment of a judicial court for Christians, since Muslims have always had their own Sharia Court of Appeal recognised by the Constitution»[35]. On his part, Justice Anigbogu foresees a situation whereby the State would legislate for the Christians in Nigeria. He highlights the fact that the State does not legislate for Churches. Some Church or Churches already have their Canon Laws, which are quite distinct from municipal law. The Catholic Church has its Code of Canon Law governing the entire Catholic world. This Code containing 1752 Canons, a revision of the earlier Code of 1917, was promulgated by the legislator, the Roman Pontiff, Pope John Paul II, with the Apostolic Constitution *Sacrae Disciplinae Leges*, on 25th January, 1983[36]. The case is different for the Anglican Church. As a body, the Anglican Church does not have a central legislative body. Indeed

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[33] *The Nation Newspaper* 11/3789 (2016) 5.

[34] E. Ojeifo, *The State, Religion and Ecclesiastical Courts*, 11 December 2016, http://www.dailytrust.com.ng/Image/like.png [access: 18/5/2017]. Rev. Fr. Emmanuel Ojeifo is a Catholic priest of the Archdiocese of Abuja. See also, http://www.dailytrust.com.ng/news/feature/the-state-religion-and-ecclesiastical-courts [access: 18/5/2017].

[35] E. Ojeifo, *The State, Religion and Ecclesiastical Courts* (cf. nt. 34).

[36] John Paul II, «Apostolic Constitution *Sacrae Disciplinae Leges*», in E. Caparros - M. Thériault - J. Thorn, ed., *Code of Canon Law Annotated*, Montreal 1993, 45-57.

the Norman Doe's edition of Canon Law in the Anglican Church notes that

> the Anglican Communion has neither a central legislative body competent to legislate for all member churches nor, consequently, a body of globally binding law. Each church in the Communion is autonomous, with its own Constitution, its own *corpus* of canons and other regulatory instruments[37].

In the light of the above, Reverend Wayne Hankey noted in an essay in 1988,

> the diversity of Canon law and attitude toward it in the Anglican Churches is overwhelming […]. Strict legal uniformity is not to be expected in the Anglican Communion nor can it be found. But there are common legal traditions and patterns. The Communion has a unity in fundamental canon law, although it cannot be doubted that this unity is at risk[38].

Most other Churches, such as Methodist, Presbyterian, etc., each with its peculiar Constitution and canons have not yet any unified Code of Laws guiding them.

On the other hand, Islamic adherents have no customary or other personal law apart from Islamic law. The Islamic law which governs the relationship between the Muslim and Allah and that between Muslims themselves encompasses the entire religious worship and daily civil life of the Muslim. Since the Muslim feels the Nigerian Constitution is Christian in concept, they demanded the Islamic Law to be empowered and protected by the Constitution.

4. **Demerits and Merits of the Bill**

There are voices which decry the problems which could erupt with a Constitutional provision for the above bill. As a result, concerns were raised over the bill.

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[37] N. Doe, *Canon Law in the Anglican Communion. A Worldwide Perspective*, Oxford 2003, xi.

[38] W. Hankey, «Canon Law», in S. W. Sykes — J. Booty, ed., *The Study of Anglicanism*, Philadelphia 1988, 200 at 206, 213.

4.1 *Demerits (Disadvantages) of the Bill*

The Catholic Bishops' Conference of Nigeria recognizes and points out the place of Sharia law in the Nigerian Constitution as one of the ambiguities the Nation must grapple with, which is backdated to the colonial system, and which needs to be addressed. «If we have been living with contradictions and ambiguities in these matters up till now, it is about time that we decided to streamline our institutions for more effective governance»[39]. The intention of the Catholic Bishops' Conference of Nigeria is that Christians and Muslims move for peaceful coexistence in the Nigerian State. This is to avoid placing two sets of laws that command two orders of allegiance from citizens of the same Nation.

Nevertheless, the Christian Association of Nigeria on her part has indicated its rejection of the bill for the establishment of a Christian Court of Appeal. The Association states that, «the Christian Courts bill cannot help us; that is why we are voicing it out. This thing is not really what Nigerians want now»[40]. There is however no concrete reason attached to this rejection of the proposed bill, besides suggesting that legalizing the bill might ignite religious crisis in the country. Thus, according to the Christian Association of Nigeria, a Christian judicial system is not an immediate need of Christians.

Ojeifo avers that Nigerian citizens should be comfortable to live and operate under the Constitution of the Federal Republic of Nigeria. This is to avert creating new problems rather than resolving the old ones. Therefore, he asserts:

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[39] Catholic Bishops' Conference of Nigeria, *Religion and State* (cf. nt. 14), 7.

[40] Christian Association of Nigeria, «CAN Kicks, Opposes Christian Courts», http://www.nigerianeye.com/2016/12/can-kicks-opposites-christian-courts-in.html [access: 25/5/2017].

> the proposed bill may have been propelled by righteous self-justification, but instead of balancing the legal equation, it will dangerously balkanize the Nation on the basis of religious differences and further promote disunity. It will compound the already faulty legal foundation of our Nation, something we have been struggling to undo with the many Constitutional review and amendment processes that have been set up over the years. It will then appear that to correct one mistake we need to make another new mistake. We should not be surprised, therefore, if practitioners of Traditional African Religion wake up one day and ask for their own special court[41].

Ojeifo further foresees the problem of the absence of a «common Christian legal Code that would be acceptable to the various denominations of Christians». He points at the dilemma Christians in Nigeria would face in trying to arrive at a common Christian jurisprudence for the proceedings of the Ecclesiastical Court[42].

Aloes Uso, the copy editor of *Ekklesia* magazine believes that Christians in Nigeria do not need Ecclesiastical Courts at present[43]. He gives four reasons for his position:
– The Matrix of Common Law in Canon Laws: The English Common Law and statutes of general applications which are applicable in Nigeria (except where overridden by legislation) is an extract and evolution of canons. Sharia Courts were established in the first place because the provisions of received English laws were at variance with the provisions of Islamic personal law.
– Submission to Ecclesiastical Court When Convenient: The jurisdiction of ecclesiastical courts will be limited to

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[41] E. Ojeifo, *The State, Religion and Ecclesiastical Courts* (cf. nt. 34).

[42] E. Ojeifo, *The State, Religion and Ecclesiastical Courts* (cf. nt. 34).

[43] A. Uso, «Does the Nigerian Church need Ecclesiastical Courts?», http://ekklesiamag.com/2017/01/28/does-the-nigerian-church-need-ecclesiastical-courts/ [access: 25/5/2017].

Christian personal law like its Sharia Court counterparts. Uso cites an instance with an institution like marriage. The Christian marriage, unlike its Islamic and customary counterpart, is monogamous. A monogamous marriage in Nigeria is a replica of the English model, which is the voluntary union of one man and one woman to the exclusion of all others. This, however, under the Marriage Act, does not imply that the union is indissoluble. Canon law, unlike civil law, will forbid remarriage under certain circumstances.

– How Ecclesiastical Laws Will Be Interpreted. In the light of the absence of a «a standard Christian legal Code which is acceptable to all Christian denominations in Nigeria», how then would the Christian Courts arrive at a common Christian jurisprudence for the proceedings of Ecclesiastical Courts, considering the vast diversity in the belief systems of the many Christian denominations in Nigeria?

– Are Christians Asking for Ecclesiastical Courts Because They Need It or Because Muslims have Sharia Courts? Nigerian law has always regarded Sharia Courts as a variant of Customary Courts. The draftsmen of the Constitution made equivalent and elaborate provisions for the Customary Court of Appeal for any states that desired it. Chapter VII Pt. IF and Pt. IIC of the Constitution in Sections 265-269 and 275-279, provides for the establishment of the said Courts at Federal and States levels respectively.

The *Editorial* of *The Nation Newspaper* calls the Christian Court Bill a «threat to secularity and unity», which «digs at the root of the country's unity». It laments that sponsors of the bill appear to ignore the Constitution's recognition of the right of the citizens of Nigeria to freedom of thought and religion, the right of freedom of citizens in a country «with multiple faiths, to practice their beliefs without derogating from the right of others, that underscores the secularity of the Nigerian State, which Sharia and Ecclesiastical laws un-

dermine»[44]. As such, the bill «encourages further division in a country with religious diversity that includes Judaism, Animism, Atheism, and various denominations of Islam and Christianity». The *Editorial* therefore underlines that «any attempt to merge state and faith in a multi-religious and multi-cultural Nation-State carries a huge threat to the security, peace, and stability of the country». The *Editorial* recalls that «past efforts to introduce faith-based legal systems have created negative impact on inter-ethnic and inter-faith harmony in the country». It therefore evokes «introduction of Sharia in 12 Northern States in 2000 led to riots, loss of lives and property»[45].

Thus, the establishment of Ecclesiastical Court of Appeal would end up compounding the country's sectarian problems. Overall, one can aver that the demerits of the bill include the following:

– The bill unfortunately lacks awareness of the situations of the ordinary Christians in Nigeria. Among the ordinary Nigerian Christians of varied denominations, there is a lack of a wide knowledge of the bill, its merits and what it is all about in the entire federation. The request for the provisions contained in the bill is expected to come from the different states of the federation. Unfortunately, all the Sponsors of the bill are from the North of Nigeria. As such, there is no guarantee of the involvement of the general body for what concerns the whole body.

– There is yet no unified Code of principles for Christians in Nigeria. If the Ecclesiastical Courts are provided for, there is yet no Code which will be implemented by the Courts. Then the question will be left for the State to legislate for Christians in the country.

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[44] «Editorial», *The Nation Newspaper*, http://thenationonlineng.net/christian-court-bill/ [access: 25/5/2017].

[45] «Editorial», *The Nation Newspaper*, http://thenationonlineng.net/christian-court-bill/ [access: 25/5/2017].

4.2 *Merits (Advantages) of the Bill*

The absence of any provision for the application or enforcement of «Christian norms or values», either in the 1979, or in the 1999 Constitution of the Federal Republic of Nigeria, has become a major source of grave concern for Christians in Nigeria, especially in the Northern part of the country. This is highlighted by the establishment of the Sharia Court of Appeal and the elaborate provisions for the enforcement and application of Muslim or Islamic Personal Law in the Constitution of the Nation. Thus, Christians particularly in the Northern Nigeria feel disenfranchised and call for a Constitutional provision of Ecclesiastical Courts to ensure equity and equality for the citizens.

Uso acknowledges that only the Catholic Church among the mainstream Churches have a unified Code of canons, where the Roman Pontiff as the legislator promulgates the Code of Canon Law for the Catholic Church worldwide. He therefore notes that «unless the different blocs that constitute Christian Association of Nigeria and National Christian Elders Forum can work out a unified Code acceptable to all registered churches in Nigeria, there cannot be any centralised system for ecclesiastical courts»[46].

Among the merits of the bill, the following could be identified:

– The establishment of Ecclesiastical Courts of Appeal: This will enhance proper dialogue and ecumenical understanding among Christians. It will promote an ecumenical formation in Christian Law. This is averred, since at present, the multiplicity of Christian denominations in the country and their strong and exclusive interpretations of their various teachings, call for serious ecumenical dialogue in order to achieve a unification of intent.

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[46] A. Uso, «Does the Nigerian Church need Ecclesiastical Courts?» (cf. nt. 43).

– Unity in the essentials: The bill opens an avenue for Christians in Nigeria to focus on the essential values uniting them. With the numerous Christian denominations registered as Independent churches, there is an indispensable need to focus on the fundamentals and basics which unite the body and which the churches share together. The different items of belief and interpretations which separate the Christian community should be deemphasised for a higher good.
– Structuring of an ideal model of Christian Unity: The presence of the bill requires that the Christian Association of Nigeria should produce an ideal model of Christian unity. This model would serve to represent the united aim and vision for Christians in the Federal Republic of Nigeria.

The rationale for the bill appears desirable considering the fact that in Northern Nigeria where Sharia Law is operative in twelve out of the thirty six States of the Nation, Christians are persecuted by extremist militant groups.

5. **Recommendations**

The future of Nigeria as a country begs the question. What is the way forward? The following recommendations could be proffered:
– Credibility of the National Constitution: The Constitution of a Nation is expected to credibly represent and protect the interests of the citizens. In this light, the Constitution of the Federal Republic of Nigeria needs to be streamlined and purified to reflect its nature, «one indivisible and indissoluble Sovereign Nation under God […] promoting the welfare of all persons in the country on the principles of Freedom, Equality and Justice» (Preamble). All obnoxious and discriminatory laws should therefore be expunged.
– The Government of the Federation must not adopt any religion as the State religion: The principle that the Government of the Federation «shall not adopt any religion as State Religion» (Section 10) should be defended and maintained.

The government of Nigeria should not favour one religion over others, be they in the minority or in the majority, since that leaves a leeway to disenfranchise the others.
– Common citizenship for everyone: The citizenship of every Nigerian should be duly respected. The multiple rights of the citizens of Nigeria to freedom of Religion, Education and Practices, etc. (Section 38), should be duly respected and protected in the country. In line with this, there should be extensive room for learning the principles and law of religions, not just at the level of basic education, but at the institutions of higher learning. Ecclesiastical Legal studies, such as Canon Law, just like Islamic Law, should be included in the curriculum of all Federal Universities if it is desirable that such religious laws should be taught[47].
Moreover, there is need for a re-orientation of the National psyche to emphasize the equality of all Nigerians as citizens with equal rights and obligations. A situation whereby some Nigerians feel they are «born to rule» while others are mere servants or subjects does not augur well for the polity. As such, Nigerians should see themselves primarily as Nigerians and not as Hausa, Igbo, Yoruba, Christians, Muslims, Northerners or Southerners[48].
– Limited role of the government in religious matters. Government should not be overly involved in religious matters, since that is the responsibility of the clergy, be they Islamic or Christian. The Catholic Bishops' Conference of Nigeria underscores the fact that as a multi-religious country, the Nigerian government should have limited role in religious practices. It rules out government patronage. If government must be involved, it has to be for the sake of promoting «the social services which religious communities naturally render to the Nation»[49]. As such, the situation whereby

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[47] J.U. Gangwari, «The Role of Religion» (cf. nt. 13), 5.
[48] J.U. Gangwari, «The Role of Religion» (cf. nt. 13), 5.
[49] Catholic Bishops' Conference of Nigeria, *Religion and State*

public funds are used «to enact religious laws and establish religious courts and pay religious leaders is not good for healthy and peaceful co-existence»[50].

– Non-sponsorship of Religious Courts: The Nigeria Government should desist from funding and sponsoring religious courts in preference of any religion against other religions. This would only jeopardize the secularity of the State, and its unified citizenry. In line with this, religious courts should not be sponsored by the government. So long as Nigeria does not operate a State religion, National sponsorship of identified religious matters and the sponsoring of same in preference to other religions translates to manipulation of religion for other motives. This recommendation could serve as a deterrent against the clamour for ecclesiastical courts. In the case of the Sharia courts hitherto sponsored by Nigeria, the recommendation could serve as a check against constitutional aberrations which have been pointed out in this contribution.

– Constitutional Amendment or Establishment of Ecclesiastical Appeal Courts: There should be a Constitutional amendment which would expunge those provisions that entrenched Sharia Courts of Appeal in the National Constitution, for instance, Sections 260 (1) and 275 (1), since they are in conflict with Section 10 on the secularity of the Nigerian State[51]. Otherwise, Canon Law and Ecclesiastical Courts or Tribunals should be accorded Constitutional and legal recognition since Sharia Law and Courts are legalized[52]. Consequently, the Christian Association of Nigeria is required to work out a unified Code of values and norms acceptable to Christians, which shall be implemented by the ecclesiastical Courts.

(cf. nt. 14), 4.

[50] J.U. Gangwari, «The Role of Religion» (cf. nt. 13), 5.

[51] Cf. J.U. Gangwari, «The Role of Religion» (cf. nt. 13), 5.

[52] Cf. J.U. Gangwari, «The Role of Religion» (cf. nt. 13), 5.

– Legal Structures to be instituted by the Christian Association of Nigeria: Ecumenical groups such as the Christian Association of Nigeria should put up legal structures in anticipation of the establishment of the ecclesiastical Courts. The structures in form of commissions, *fora* etc., shall be receptive of the bill, study, interpret and provide the machinery to facilitate its functionality. This is in the consideration that the Law makers themselves may not be experts in Christian norms and values.
– Religion as a positive factor in promoting unity: The former Catholic Bishop of Port Harcourt, His Lordship Alexius O. Makozi, focusing on the preamble of 1979 Constitution of Nigeria[53], believes that the country can live in unity and harmony as one indivisible and indissoluble sovereign Nation under God if it is taken seriously, fairly and solemnly. He notes that the recognition of God as the Supreme Lord is one of the objectives of the mainstream religions in Nigeria. Thus, religion should be a positive factor in promoting unity rather than disintegration and chaos, and should be given its rightful place. Consequently, in observance of the Constitution, every good government should ensure that freedom of religion is maintained as a fundamental and inalienable human right of the citizens.

6. **Conclusion**

The discussion so far highlights the question of the desirability of the bill to establish ecclesiastical courts for Christians in the light of the secularity of the Nation of Nigeria with its perennial aspiration for unity in diversity; and the applicability of the same bill within the often self-divisive structure of the Christian religious groups in Nigeria.

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[53] A.O. Makozi, *Religion and Politics in Independent Nigeria. A Historical Analysis*, Lagos 1996, 65, at 54-55. Reference to Federal Ministry of Information, *The Constitution of the Federal Republic of Nigeria*, 1979, 1.

The puzzle remains that even though the bill for the establishment of ecclesiastical courts for Christians appears desirable, in order to guarantee equal rights to Christians in Nigeria, yet the dilemma focuses on the actual inner logic of the Christian religious faith as a credible organ for Christians as both believers and *bona fide* citizens of the nation. The demand for constitutional recognition of ecclesiastical courts for Christians would invariably duplicate the jeopardy against the secularity of the Nation and its constitution. Questions over the applicability of the present bill intuit the often self-divisive structure of the Christian religious groups in the country. It is obvious that the legalization of Christian ecclesiastical courts alongside the Islamic Sharia courts would only serve to aggravate an already acerbated situation, in which religious autonomy strongly contradicts equal rights for all citizens.

There is, therefore, the clarion call for Nigeria to do the needful. The country should amend the Constitution to purely represent the secularity of the Nation. There should necessarily be a Constitutional amendment to expunge those provisions of Sections 260 (1) and 275 (1) that established Sharia Courts in the twelve States of the Nation. Alternatively, then, the bill to establish Ecclesiastical Courts of Appeal for Christians in the country should be granted constitutional empowerment, in order to guarantee equal rights to the Christian citizens of Nigeria. The Ecclesiastical courts however should not be sponsored by the Nation, since this would jeopardise the equity that characterises Nigeria's Constitution.

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Summary

This contribution addresses the question of the need for a provision for Ecclesiastical Courts in the Constitution of the Federal Republic of Nigeria, which, from one part, guarantees

freedom of Thought, Conscience and Religion to her citizens, and from other provides the Muslim the constitutional right to vindicate his/her rights in the Sharia Courts of Appeal. The paper interrogates what the significance should have such «Ecclesiastical Court of Appeal» for Christians in Nigeria and what could be the merits, demerits and future prospects of such a bill in a secular State, with freedom of religion for the multiple faiths of the citizens.

Keywords: constitutional secularity; ecclesiastical courts for christians; personal status law; preferential treatment.

Sommario

Tribunali ecclesiastici di appello in Nigeria

Questo contributo affronta la questione della necessità di una disposizione sulla creazione dei Tribunali Ecclesiastici da inserire nella Costituzione della Repubblica Federale della Nigeria, la quale, da una parte, garantisce la libertà di pensiero, coscienza e religione ai suoi cittadini e, dall'altra, già prevede per i Musulmani il diritto costituzionale di rivendicare i propri diritti nelle Corti di Appello della Sharia. L'articolo interroga quale significato debba avere tale «Corte Ecclesiastica d'Appello» per i cristiani in Nigeria e quali potrebbero essere i meriti, i demeriti e le prospettive future di un simile disegno di legge in uno Stato laico, che garantisce la libertà di religione per i cittadini che professano una moltitudine delle credenze.

Parole-chiave: laicità costituzionale; tribunali ecclesiastici per i cristiani; legge sullo statuto personale; trattamento preferenziale.