Ethnic conflict in Nigeria: Constitutional law and the dilemma of decision-making

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Abstract

Ethnic conflicts may be triggered by factors such as geographical proximity, group identity, deliberate manipulation of negative perceptions by political leaders, competition of resources, weakness of political institution, and transitions to democracy. This paper enquires into how an ethnic conflict occurs as a result of actions or decisions made by either local or state / federal government in Nigeria. The main focus is the decision to implement the *Sharia* laws in Northern Nigeria, in particular, how it has led to bloody conflicts in the country. In-depth information materials gathered from informants were utilised to examine the scene of ethnic conflict in Nigeria. It was found that a number of violent events that had occurred in Nigeria was due to the manipulations of the constitutional law in a process of decision making by Muslims and Christian leaders and political elites that cannot fulfill the expectations of their respective ethnic groups. The consequences had been devastating in the forms of innumerous loss of lives, homes, destruction of properties and displacements. The economic consequences of the conflict were unequal distribution of resources among individuals, groups and regions within the nation. In conclusion, bad decision-making had led to ethnic conflicts in a highly charged ethnically polarised country such as Nigeria.

Keywords: decision-making, ethnic conflicts, government, religious conflicts, *Sharia* laws

Introduction

Ethnic heterogeneity is a pervasive feature of the contemporary world. The problem it poses, especially in deeply divided or plural societies, is one of reconciling ethnic diversity with overarching loyalty to the state. This is the more problematic because the state is not a neutral force in mediating political conflict. It can be captured and used to further the interests of the leadership of an ethnic group or combination of such groups. A plural society is thus one in which politics is ethicized, and in which political competition is overtly drawn along ethnic lines. Examples of such societies are Belgium, Ceylon, India, Lebanon, The Netherlands, Nigeria and Yugoslavia, among others. Ethnicity, as an aspect of political processes, should be viewed dynamically (Adele Jinadu, 2011).

Nigeria is within such a context that its salience in her federalism should be situated. The concept refers to identity relationships which are based on a common language, religion, culture, caste, or race are sometimes referred to as primordial attachments. Ethnicity *per se*, need not generate conflicts; but once it is situated in a particular type of social or plural diversity, it assumes potential conflict significance. This is partly because, with scarcity being a major

constraint in politics, ethnicity becomes a crucial criterion for regulating political conflict and distributing public goods and bad in situations of plural diversity. In other words, the political salience of ethnicity is due to its being deployed for competitive purposes by political entrepreneurs. The mechanisms of deployment are various and can include political parties, bureaucracies, the military, trade unions, ethnic unions, and the like (Adele Jinadu, 2011).

Nigeria is one of the most ethnically complex countries in the world with more than 250 ethnic groups within a population of 150 million; it is also Africa's most populous country. The four main ethnic groups are the Hausa 21 percent, the Yoruba 21 percent, the Ibo 18 percent and the Fulani 11 percent (Payne & Nassar, 2008). The Hausa and the Fulani are in the north, the Yoruba are concentrated in the west, and the Ibo live in the east. Further complicating ethnicity in Nigeria is politics and religion. The northern part is dominated by Muslims and the southern and eastern regions are populated mainly by Christians. The petroleum wealth is located in the predominantly Christian Ibo region of the east.

The southeast and the Hausa have ruled the country for most of its history and controlled the military regimes. The Yoruba of the west blame the northerners for the country's political and economic problems. The ethnicization of politics for purposes of constitutional experimentation has turned out to be a powerful obstacle to the working of Nigerian federalism. Because Nigerian federalism is based on ethnic and not geographical diversities, it has tended to exacerbate centrifugal forces in the country. This study examines the ethnic conflicts caused by the introduction of *Sharia* law in the northern state of Nigeria. Data were collected through qualitative in-depth interviews of key informants.

Brief political history

After gaining independence from Britain in 1960, Nigeria was under military rule for approximately 30 years. The military rule in Nigeria sacrificed the rights of the country's people and in many cases abused the power of government. Nigeria had six changes of government during the era of the military rule during which it dealt with a huge amount of violence and corruption during the rule of the different presidents. The violent military rule also led to the Nigerian Civil War which ended in 1970. In May of 1999, a democratically elected government was sworn into power.

As per the constitution of Nigeria, it was divided into three divisions of the executive, legislature and judiciary. Special powers and laws are also framed for the local government. The legislative powers were vested in the hands of the National Assembly, which comprised a Senate and a House of Representatives. The Senate consisted of 109 members who are elected for a term of four years. The House of Representatives consists of 360 members, elected from each of the assigned constituencies of the country for a period of four years. The Senate and House of Representatives were presided over by a Speaker and Deputy Speaker, elected by the members of the House (http://www.123independenceday.com/nigeria/political-system.html).

One vital aspect of the current Nigerian political system is that the executive powers of the government lie in the hands of the President who is also the Head of State, the Chief Executive of the Federation and the Commander-in-Chief of the Armed Forces of the Federation of Nigeria. The Nigerian judiciary consists of a Supreme Court, Court of Appeal and a Federal High Court. It is also important to note that each state in Nigeria has a High Court, a *Sharia* Court of Appeal and a Customary Court of Appeal. The Chief Judges of these courts are appointed by the Advisory Counsel of the National Judicial Council. The objectives of the legal system in Nigeria are to settle conflicts of the Nigeria citizenry in a civil manner, that is, without having to resort to violence and

corruption. The legal system is also there to protect the rights and freedom of the citizens. Finally, it is to serve in the election process when elections come around.

Turns of events saw that all the lofty objectives of the Nigerian constitution had not materialised. Nigeria has had to deal with a huge amount of abuse of power and unfair political and legal systems. This had led the country into a downward spiral of corruption, violence, and poverty, and ultimately a totally failed country economically, politically, and in terms of legal standards.

Decision to impose *Sharia* laws and ethnic conflicts

Nigeria has maintained a written constitution as the supreme law of the country. Thus, there is a departure from the British unwritten political and constitutional principle. Nigeria has also maintained two (and as from 1979, three) separate lists stating the functions of the federal, state and local governments. In order to strengthen the hands and position of the federal government for purposes of legislation and control, Nigeria has adopted from America the doctrine of Repugnancy and from Australia, the Doctrine of Covering the Field. By the Doctrine of Repugnancy, the Nigerian Constitution maintains that any law which is inconsistent with the provisions of the constitution shall be void to the extent of the inconsistency. By the Doctrine of Covering the Field, it is maintained that the Federal Government can legislate on any matter which it has legislative competence. Any State laws which are inconsistent with a Federal legislation on the same subject shall, to the extent of its inconsistency, be void and inoperative (http://www.nm.onlinenigeria.com).

In any case, the relationship between constitutions and political processes has proven to be inherently problematic. This is partly because the experiment is necessarily based on incomplete information. It is also due to the ambiguities and obscurities inherent in the use of language, the medium in which constitutions are written, as a guide to political action. Nevertheless, the notion of an experiment suggests that constitutions are informed by certain guidelines, which can also be used to assess the experiment.

This view of constitutions as experiments in collective action to structure patterns of dominance and authority leads to the argument of this article. Since its inception, Nigerian federalism has always reflected attempts by the country's emergent political class to regulate political conflict along ethnic lines by disaggregating constitutional authority between two levels of government. Over the years, this disaggregating has become increasingly consociational (power sharing) in nature. It has also required the formulation of policies, similar to what might be described as affirmative action type policies, to assuage ethnic fears at critical periods in the country's political and constitutional history. The argument has also been that the adoption of consociational arrangements is a strategic device to broaden the ethnic base of the emergent political class in order to resolve contradictions arising from existing patterns of domination and authority.

In other words, the Nigerian political class, drawing lessons from the country's federal experiments, has adopted modes and policies of conflict regulation which are more and more consociational in nature in order to deal with these contradictions. Each new experiment on the substantive norms and procedural mechanisms of governance is based on an elite consensus, on rational and pragmatic calculations of mutual benefit and advantage by ethnically based fractions of the political class. By ostensibly acting to protect and promote ethnic interest, by "politicizing ethnicity," the political class attenuates or dampens cross-cutting cleavages.

This, however, has created an enduring problem for Nigerian federalism. The ethnicization of politics for purposes of constitutional experimentation has turned out to be a stubborn obstacle to

the working of Nigerian federalism. Because Nigerian federalism is based on ethnic and not geographical diversities, it has tended to exacerbate centrifugal forces in the country.

The major transformation in the country regarding ethno-religious identities has been with regard to the reintroduction of the *Sharia* legal code or its expansion from personal to criminal matters. The development was set in motion by the formal launching of the *Sharia* by Ahmed Sani, the governor of Zamfara on 27 October 1999, and thereafter by 11 other northen states - Sokoto, Kebbi, Niger, Katsina, Kaduna, Kano, Jigawa, Bauchi, Yobe, Gombe, and Borno. In reintroducing *Sharia* into the domains of criminal justice, these states evoked on the somewhat ambiguous clause in the 1999 Nigerian constitution that empowered a state assembly (or the National Assembly in the case of the *Sharia* Court of Appeal in the Federal Capital city of Abuja) to confer additional jurisdictions on the *Sharia* Court of Appeal (Suberu, 2009).

The dramatic impact of this decisional method was that political apparatus had been utilized as a machine for generating projects, for making choices at the level of society as a whole and for carrying them out Sidjanski (1973). It was not, however, confined to this aspect but embraces also the factors that influence the implementation of a decision. Decision compels individuals and groups to take position and act. Decisions, and especially important ones, bring to light the various forces which gave them birth.   As in the turning points or crises of a man's life, when he is challenged to show his mettle by his deeds, a decision of importance forces groups and leaders to show where they stand.

For this state of affairs, a respondent of this study, Zamfari, a polygamous politician and traditional leader or king who had his first degree in Economics from the Nigerian Poly-Techniques in Kaduna offers the following explanation:

> *… if the system and implementation of power in our present country had been the same during the earliest fathers and leaders who fought for the independence, there would have been any thing called one Nigeria. The country as seen today is due to power ambitiousness or …power intoxication for the national resource…This has caused the adherents to live daily in lies, mistrusts, manipulations of the constitutional laws in order to acquire wealth wrongly through corruptions. Every political leader, elite, or candidate is stepping out only to be legitimised into power and whence in power, there comes their reality twist and turn decisions. Twist and turn are what characterize every average government seat, and they even vowed either to kill (as experienced in so many of them previously), or cause violent actions and statements, or to change rules and laws to fit their evil ambitions. That is not the kind of politics we saw or was born into before… The politics I first embraced in my early years was full of honours, integrity, and never selfish in character. It was a rule of law…not injustice.*

From Zamfari's statement, it is quite clear that not a single current national leader has actually upheld power without at least partially misusing it. Alternatively, no leader who truly upheld the national laws and policies could last long in office; either he would be overthrown or assassinated. As far as Nigeria's history goes, immediately after independence in 1960, there has never been any good leader of the country that lasted in office without being over-powered by different other groups. This was the underlying factor that ignited Nigeria's civil wars.

The overt cause of the problem was the imposition of *Sharia* law in most northern states of the country. This is simply the reaction to the power shift in the country for the north to maintain its hegemony in the political system of Nigeria. This decision was also an attempt to disorganize the Nigerian government now that a southerner is on the throne. To be sure, this imposition of the

Sharia laws was against the secularity of the nation as enshrined in the constitution of the Federal Republic of Nigeria. As such it was greeted with widespread violence, riots and clashes not to mention suspicion, hatred and antagonism between Muslims and non-Muslims in the country.

The imposition of the *Sharia* increased fanaticism and irredentism on the side of most Islamic adherents and gave legitimacy to Islamic fundamentalism. This was done ostensibly to create appeals and sustain devotion to Islamic tenets with disastrous consequences. An in-depth interview with Okaa (2007), a 51 year old Christian Church leader in the Kaduna metropolitan with a Masters in Theology and married revealed the following:

> **...***the sources of conflict between the northerners and non-northerners here in the north is as complex as the country's diversity, but religiously motivated conflicts are more frequent and predominant, and have challenged the legitimacy of national authority since the early days of colonialism..*

The existence of religious contradictions in the country looks daunting. Nigeria is essentially a heterogeneous community shaped by two monotheistic religions, Islam and Christianity . In addition, a sizeable fraction of the population still prides itself as being pure religious traditionalists, meaning adherence to one or other of the many traditional belief systems. Interestingly, the origin of the mobilisation of religion as an instrument of politics in Nigeria can be traced to the colonial era. Although the British colonialists claimed to have created a secular Nigeria, available evidence suggests that the colonial administration consciously employed religion as an instrument of pacification. A key consequence of this development was the increase in the mobilization of identities and in the resurgence of the politics of identities both in relation to the reintroduction of the *Sharia* and the reactions to it.

The *Sharia* is a system of Islamic laws based on four main sources: the *Qur'an* (God's revelation to the Prophet Muhammed); the *Sunnah*, or the sayings and actions of the Prophet Muhammad together with the actions of his companion approved by him as described in the *Hadith*; the *Qiyas* or process of analogical reasoning based on understanding of the principles of the Qur'an or the Hadith; and the *Ijma*, or consensus of opinion of the Ulama Islamic scholars (Sambo 2003).

To be sure ethnic clashes had taken place even before the historic imposition of the *Sharia* laws. In 1999, the regional, ethnic and religious fighting continued in several regions of Nigeria, claiming over 1,000 lives. Conflict flared not only between ethnic groups, but also between ethnic groups and the state, especially in the oil-producing region of the Niger Delta. Clashes were also reported between Muslims and Christians in northern states, killing at least 100 people. The government deployed troops to troubled areas around the country in an attempt to control the violence. Intense fighting continued in the Niger Delta region between ethnic groups especially the Ijaw and government soldiers and security forces. A state of emergency, declared for a few days at the end of December 1998, lasted into January 1999 after as many as 240 people were killed in clashes between protesting Ijaw youths and government troops in the Niger Delta state of Bayelsa.

The Kaduna *Sharia* journey was tortuous and it started on December 14, 1999, when the Kaduna House of Assembly constituted an 11 person, all Muslim member committee to collate views of the people on the need to introduce the *Sharia* legal system in the state. This singular action polarized the House of Assembly across religious lines. The Christian members of the House of Assembly argued that the motion was not properly passed, and accused the Muslim members of having a hidden agenda. The Muslims, in turn, argued that *Sharia* is purely a Muslim affair that had nothing to do with Christians. They also maintained that there was nothing wrong with the way the motion was passed, pointing out that two Christian members nominated to participate in the committee declined their nominations.

The Committee began work shortly after it was constituted. It demanded memoranda from the public and began its public hearing in January 2000. The Christian community refused to appear before the committee. They argued that it was biased and the process of its constitution was illegal (Okpanachi, 2000). Muslims from various local governments in Kaduna State trooped to the House of Assembly to present their memoranda and express solidarity with the House of Assembly. Both Muslims and Christians organized rallies and lectures to educate adherents of the religious groups on their differing points of view. On 29 January 2000, The Christian Association of Nigerian (CAN) held a Seminar at HEKAN Church, Katsina Road, Kaduna to enlighten Christians on the implications of adopting the *Sharia* on Christians and Christianity. Different eminent personalities were invited to present papers including the former leader of the secessionist Biafra, Chief Chukwuemeka Ojukwu, who condemned *Sharia* as an infringement of Christians' rights and advised Igbo migrants to stand by the indigenous Christians in the north. The National body of *Jama'atul Nasir Islam* (JNI) also organized a programme on the *Sharia* at Arewa House around this period to which some Christians were invited as speakers. Both Muslims and Christians used their worship centres to pass commentaries on the *Sharia*. While this was going on, the Kaduna State government constituted two inter-religious committees consisting of equal numbers of Muslim and Christian leaders, all in an attempt to calm the political temperature (Abdu and Umar, 2002).

The *Sharia* violence in Kaduna took place in two main waves, sometimes referred to as *Sharia* I and *Sharia* II.   The first wave took place in Kaduna city, as stated above, from February 21 to 25, 2000 with further killings in March, followed by a second wave from May 22 to 23. On Wednesday 23 March 2000, the crisis spilled over to outlying LGAs, particularly Kachia and Birnin Gwari. In Kachia LGA, Muslims were attacked. Their residential houses, shops, clinics, courts, filling stations and the market were destroyed. It later spread to neighbouring villages like Sakainu, Katul, Adadgai, Slowai, and Gumel (Abdu and Umar, 2002).

The May 2000 Sharia II violence occurred while the Judicial Commission of Inquiry, set up to probe the February's clashes, was yet to complete its work. The clash started at Narayi and Banarwa areas and later spread to other parts of the city. While the immediate cause of the crisis could not be fully ascertained, police said the clashes broke out after residents of a mainly Christian neighborhood blamed Muslims for the killing of a local man. Others however saw it as the continuation of the February *Sharia* violence. It took a combined team of fully armed soldiers and policemen to restore peace to the city. An accurate, total death toll has never been ascertained. The Judicial Commission of Inquiry set up by the Kaduna state government reported that at least 1,295 people had been killed, while an unspecified additional number was buried unidentified, and others were declared missing as a result of the February riots alone. In all, it is believed that the two Kaduna riots left at least 3000 persons dead and led to the displacement of over 63,000 people within Kaduna and its surroundings (International Displacement Monitoring Centre, 2007).

In 2001, religious and communal fighting targeting civilians continued in several Nigerian states through the year. Deaths from Christians, Muslims, and ethnic clashes and from attacks by government troops likely exceeded 2,000. In 2002, ethnically, religiously, and politically motivated violence claimed the lives of hundreds of Nigerians, most of them civilians . Political violence intensified in response to elections scheduled for the beginning of 2003 and religious violence over the controversial "Miss World" pageant claimed over 200 lives. The year 2004 saw an inter-communal clash involving government security forces and attacks on oil facilities. Most violence occurred between Muslim and Christian militias in and around Kano and between oil militias and government security forces in and near Port Harcourt. In 2005 Sunni and Shiite Muslims clashed in the north-western town of Sokoto. Major inter-ethnic clashes over land were

reported in central eastern Adamawa state. Violence by ethnic militias, gangs, local police and the Nigerian army continued in the Niger Delta mainly linked to access to land and oil wealth and to demands for self-determination. Muslim extremist clashes with Nigerian security forces and attacks by insurgents on oil installations in Port Harcourt contributed to the year's violence. In 2006, the most horrific incidents involved riots between Muslim and Christian citizens over the publishing of cartoons depicting the prophet Mohammed in Danish newspapers. The violence began in Maiduguri as Muslim rioters burned Christian churches and attacked civilians. Christian inhabitants then retaliated by looting Muslim shops and killing and burning Muslim civilians. A new government report estimated the number of people killed by violence in Nigeria as over 50,000 since 1999.

Today, the government acknowledged the legal authority of states to implement the *Sharia* criminal laws. Although expanded *Sharia* laws technically do not apply to non-Muslims, some non-Muslims, especially in Zamfara states, have been affected by certain social provision of the laws, such as the separation of the sexes in health facilities; banning of the sale of alcohol and alcohol consumption; and decision by some entrepreneurs not to engage in certain activities because of concern with *Sharia* restrictions. In some states, cases involving only Muslims must be heard by a *Sharia* court.

Other states with the *Sharia* laws still permitted Muslims to choose common law courts for criminal cases. However, societal pressures forced most Muslims to use the *Sharia* court system. There were no challenges to the constitutionality of the *Sharia* during the year. A number of sates sanctioned private *Sharia* enforcement groups that formed in states with the expanded *Sharia* laws. The Zamfara state vested local vigilante groups with full powers for   arrest and prosecution because the state believed that the police were not enforcing the new *Sharia* law. The Jigawa state also mobilized a statewide *Sharia* enforcement committee to arrest, detain, and prosecute Muslim offenders. Informal *Sharia* enforcement groups may have been used for some law enforcement functions in other northern states as well (Coleman, 1958).

The fundamental issue about the *Sharia* is that it lies at the heart of identity politics in Nigeria. Supposing some Nigerians want *the Sharia* and other Nigerians do not, what then is negotiable between those two options? At the moment, nothing is negotiable even if there may be substantial areas of negotiability between these two positions. Some of these areas include considerations as to which areas will it be applied? How will non-Muslims be affected? How can non-Muslims appeal against the *Sharia* decisions outside the *Sharia* system? Moving further, in the light of globalization, how does Nigeria determine the limits within which it will implement the *Sharia* so that the rights of non-Muslims are respected? How do Muslims evaluate changes in the *Sharia* without losing their distinct identity as Muslims? What practical steps can Nigerians take? While the implementation of the *Sharia* should apply to the rich and poor alike, how can the nation create spiritual policemen or a spiritual judges? (Okpanachi, 2000).

These religious identity issues notwithstanding, there are other causes worth considering. The following is the opinion of a key informant, Kano (2007), a 47 year old married Bachelor of Science degree holder and a non-indigene of Kano who was also a renowned business tycoon residing in the capital city of Kano State, and trading in building-materials all over the country :

> *I think it is unfortunate and a misrepresentation of the national issue if the northern elites link the ethnic conflicts to the declining political power of the north. Yes, they are properly aware of the link as you named it; the reason is because of the divide-and-conquer method that was used to pit ethnics against each other by the colonials tokeep the people from rising up against the colonisers. The distribution of economic resources was often skewed to favor a particular group, pushing the marginalized to play ethnicity card to mobilize*

for equality. When properly and critically analysed, one will understand that the Northerners are following the foot-print of their colonial maters who favored them against other ethnic groups. When carefully looked into, you will be able to notice the link as indicated in their demand for ethnic and cultural autonomy which indirectly takes the form of adaptation of the Islamic culture. Take for instance, the controversial Sharia laws as against the national laws. It is the competing demands for the national resources and power which are the major causes of conflicts that had taken place between rival ethnic groups. In fact,I can add that when there were assumptions of being entitled to certain rights and positions by individuals, group or even regions, this can as well cause self-centeredness, leading to conflicts. Changing something collectively owned into an exclusive right of particular individuals or groups gives these parties the ability to demand its realization from those who have a "duty" to realize it. However, such demands may make it more difficult to modify one's claims in the face of reasonable claims of others. Indeed, rights talks often lead parties to forget that their liberties are limited by the stipulation that they do not harm others. When parties do not balance their rights claims against the rights of others conflicts are likely to occur. But as in the case of the northerners, there has not been so much declining in their political power , they still hold the power.

In other words, as long as political power is not distributed equally, competition between groups will keep re-occurring. So far, there are no signs of reduction of political domination from the northern political elites. The implementation of the *Sha'ria laws* indirectly strengthened the political elite in the north because the majority of the northerners are Muslims.

Policy formulation consequences of the ethnic conflicts

There are some notable consequences of ethnic conflicts on Nigeria's national policy formulation. In essence, the consequences revolve around the establishment of functional and effective platforms for inter ethnic grievances to be aired, discussed and nipped before they escalate into ethno-religious crises. There are several efforts at the national and grassroots levels to promote interfaith dialogues and communications between Muslims and Christians to prevent future outbreaks of violence and promote ethno-religious tolerance and federal cohesion.

At the national level, the leaders of NSCIA and the Christian umbrella group, Christian Association of Nigeria (CAN), have given their commitment to interfaith dialogues and some form of peace building between the two communities. The government of Nigeria has also used a variety of mechanisms in the past to manage religious conflicts for the sake of national unity. For instance, in the 1990s the government moved the federal capital from Lagos, in the southwest, to Abuja, a city with a symbolically neutral location at the center of the country, and which became home to both a national mosque and a Christian ecumenical center.

At the local level, leaders like Pastor James Wuye and Imam Mohammed Ashafa whom USIP has helped sponsor to mediate religious conflicts in places like Kaduna, Jos and Bauchi have been effective in working with communities to mitigate conflicts, promote tolerance and coexistence, and address the root causes of the conflicts (United State Institute of Peace http://www.usip.org).)

Conclusion

In general, in spite of positive and constructive efforts to promote inter-ethnic solidarity in the country, the Nigerian government has not been very successful in tackling the sticky problem of ethnic violence through articulated and well organized policy actions. The country's track record in conflict management has been poor as the government continues to rely on coercive methods and more often than not fails to implement whitepaper recommendations on managing and mitigating the conflicts. Thus it looks like ethno-religious conflicts will continue to afflict multi-ethnic and multi-religious Nigeria.

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