

Boko Haram, Sharia Law and the Nigerian Constitution: An Unholy Alliance?

Introduction

This piece explores how the regional and political stakes involved in the expansion of Islamic law (Sharia), in violation of Nigeria's 1999 Constitution, has provoked considerable turmoil and social disorder in northern Nigeria. In particular, the piece shows how this has goaded the emergence and radicalisation of Boko Haram – an Islamist militant group that has killed at least 10,000 people since 2009ⁱ when it first launched its jihad to wrest control from the Nigerian government and create an Islamic State of Nigeria.

Sharia law in Nigeria

Since the end of military dictatorial rule in 1999, more than 18,000 Nigerians have died in inter-communal, political and sectarian violence. However, statistics on religious violence across the country reveals that 95% of religious conflicts occurred in northern Nigeria. For example, out of the recorded 178 conflict outbreaks in northern Nigeria between 1980 and 2004, 104 had religious undertones.ⁱⁱ Many factors fuelling these religious conflicts are common across Nigeria, ranging from the political manipulation of religion and ethnicity, to disputes between local groups and settlers over distribution of public resources.

The failure of the Nigerian government to address pervasive poverty, corruption, police abuse, and long standing impunity for a range of crimes has created a conducive environment for the breeding of extremist groups. Indeed, many studies of extremist movements stress the underlying grievances that engender impetus for collective action, including 'blocked social mobility, a lack of political freedom, economic despair, a sense of cultural vulnerability, humiliation and state repression.'ⁱⁱⁱ

In this piece, I contend that it is not religion per se, but its politicisation and manipulation which has so frequently triggered tensions and militant religiosity in northern Nigeria. As Jeffrey Seal rightly observes, 'religion is not the cause of religious conflicts; rather for many... it frequently supplies the fault line along which intergroup identity and resource competition occurs.'^{iv}

In Nigeria, the politicization and manipulation of religion is most evident in the Sharia law debate that engulfed the country shortly after its return to democratic rule in 1999 following decades of military rule. To be sure, Nigeria's transition from northern-dominated military rule to a southern-led civilian regime in 1999 revived fierce debates on what the status of Sharia should be in an independent state.^v

The issue attained new importance when Zamfara state became the first northern state to extend Sharia from personal status issues into the domain of criminal justice. The then Zamfara State Governor, Ahmed Sani, was quoted as saying: 'Whoever administers or governs any society not based on Sharia is an unbeliever.'^{vi} Sharia courts were put in place by Zamfara and vested with jurisdiction over civil and criminal matters. Zamfara state arrived at these by way of five laws, including: '(a) Sharia Court (Administration of Justice and Certain Consequential Changes) Law No. 5, 1999; (b) Sharia Court of Appeal (Amendment) Law No. 6, 2000; (c) Area Courts (Repeal) Law No. 13, 2000; (d) Sharia Penal Code Law 1999; (e) Sharia Criminal Procedure Code Law No. 18, 2000.'^{vii} Eleven other northern states soon emulated Zamfara.

The adoption of Sharia coincided with the rise of the hisba (vigilante groups) which operated

primarily in the cities against individuals or groups who were violating, or were perceived to be violating, Sharia law. In such situations, the infractions that were punished did not necessarily violate Nigerian law.^{viii} Notwithstanding the controversies brought about by the application of Islamic criminal law, the Nigerian justice system has remained operational across much of northern Nigeria.

In extending the Sharia into the purview of criminal justice, these northern states drew on the uncertain clause in Section 6(5) of the Nigerian Constitution of 1999 that gave a state assembly the power to confer extra jurisdictions on the Sharia Court of Appeal. To be sure, section 6(5) of the Nigerian Constitution recognises the following Courts: (1) The Supreme Court of Nigeria, (2) The Court of Appeal; (3) The Federal High Court; (4) The high Court of the Federal Capital Territory, Abuja; (5) the Sharia Court of Appeal of the Federal Capital Territory, Abuja; (6) a Sharia Court of Appeal of a State, (7) the Customary Court of Appeal of the Federal Capital Territory, Abuja; (8) a Customary Court of Appeal of a State; and (9) such other Courts as may be authorised by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws.^{ix}

In section 262, the Constitution specifies the jurisdiction of a Sharia court as follows: ‘subsection 1, The Sharia Court of Appeal shall, in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law.’ Subsection 2 states that ‘For the Purpose of subsection (1) of this section, the Sharia Court of Appeal shall be competent to decide:

- (a) any question of Islamic personal law regarding a marriage concluded in accordance with that law, including a question relating to the validity or dissolution of such a marriage or a question that depends on such a marriage and relating to family relationship or the guardian of an infant;
- (b) where all the parties to the proceeding are Muslims, any question of Islamic personal law regarding a marriage, including the validity or dissolution of that marriage, or regarding family relationship, a foundling or the guardianship of an infant;
- (c) any question of Islamic personal law regarding a wake, gift, will or succession where the endowed, donor, testator or deceased person is a Muslim;
- (d) any question of Islamic personal law regarding an infant, prodigal or person of unsound mind who is a Muslim or the maintenance or the guardianship of a Muslim who is physically or mentally infirm; or
- (e) where all the parties to the proceedings, being Muslims, have requested the court that hears the case in the first instance to determine that case in accordance with Islamic personal law, any other question.’^x

The foregoing clearly specifies that the Sharia court is limited to personal law and shall have no jurisdiction on civil matters except otherwise conferred on it by an Act of the National Assembly. According to section 257 and 272, these fall within the jurisdiction of the High Courts of a State and the High Court of the Federal Capital Territory, Abuja. In this case, ‘adopting Sharia laws, for those matters, specified in the jurisdiction of the Sharia courts seem logical and constitutional.’^{xi} However, those must be circumscribed to the areas of Personal laws. Any effort by the State to extend the reach will invariably clash with the provision of section 4(2) of the Nigerian Constitution. It is against this background that Oraegbunam argues that ‘The enforcement of Criminal Sharia impinges on the citizenship rights conferred on membership in the federal union, namely, the right to move about freely throughout the territory of the union, and to live wherever one chooses without molestation based on his religious affiliation, the right to earn livelihood in his chosen place of residence by means permitted by law, and the right to be treated alike by the state with other citizens.’^{xii} The point that Sharia law does not regard all citizens as equal before the law is corroborated by the distinction in Islam between ‘house of Islam’ and ‘house of war.’^{xiii} The House

of Islam (*dar al-islam*) refers to the lands under Muslim control; it includes those areas where Sharia law is the law of the land. House of war (*dar al-harb*) describes the outside or Western world, which has not yet been subjugated to the teachings of Mohammed. This also includes predominantly Muslim areas where the Sharia law is yet to be fully implemented. As the name implies, the house of war is strictly speaking in a perpetual state of *jihad* with non-Muslims (*kafirs* or infidels) until Sharia law is imposed in its entirety.

Sharia, Constitution and conflict

Plans to extend Sharia law in the religiously diverse and volatile northwestern state of Kaduna led to bloody clashes that claimed some 2,000 lives in February and May 2000.^{xiv} There were subsequent outbreaks of religious violence, directly or indirectly related to the expansion of Sharia, in the northern states of Bauchi, Gombe, Niger, Sokoto, Kano, Borno, Jigawa, Plateau, as well as Kaduna.^{xv} Aside from igniting lethal sectarian violence, the extension of Sharia has spawned an unprecedented debate regarding the constitutionality, political viability and social sustainability of Sharia implementation in northern Nigeria.^{xvi}

The adoption of Sharia by twelve northern states contradicts federal legislative prerogatives, particularly Section 10 of the 1999 Nigerian Constitution, which clearly affirms the secularity of the Nigerian state: 'The Government of the Federation or of a State shall not adopt any religion as State religion'. Section 3 of the 1999 Constitution states that: 'If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void'.^{xvii} Since this section of the Nigerian Constitution proscribes any State religion, it would seem that introducing religious rules as State laws will essentially contradict this section. Yet conservative politicians at the state level argue that it is the Islamic law (God-made) that must override the Nigerian Constitution (man-made), not the other way round. In 2001 at an Islamic seminar in Kaduna, 2015 presidential candidate of the All Progressives Congress (APC) General Muhammadu Buhari was asked to choose between Nigeria's secularism and fundamentalist Islam, this is what he said: 'I will continue to show openly and inside me the total commitment to the Sharia movement that is sweeping all over Nigeria... God willing we will not stop the agitation for the total implementation of the Sharia in the country.'^{xviii} Elsewhere, Buhari stated that the spread of Sharia is 'a *legal responsibility* which God has given us, within the context of one Nigeria to continue to uphold the practice of Sharia wholeheartedly and to educate non-Muslims, what remains for Muslims in Nigeria is for them to redouble their efforts, educate Muslims on the need to promote the full implementation of Sharia law.'^{xix}

The adoption of stringent Sharia codes was the high watermark of nearly four decades of Muslim pressures for the accommodation of Sharia within the judicature and general constitutional architecture of the Nigerian federation.^{xx} Cook contends that the move to impose Sharia in northern Nigeria, following General Sani Abacha's death in 1998, was triggered by a 'messianic fervor and belief in the efficaciousness of Sharia as a panacea for Nigeria's problems, and most especially for the country's growing corruption and lawlessness.'^{xxi} Cook further identifies proximate causes like the election of Olusegun Obasanjo, a Christian Southerner, 1999 and 2003, and the consequent perception that the 'Muslim' north was conceding power grounds to the 'Christian' South.^{xxii}

A more authoritative angle on the issue is provided by Adesoji who argues that, '[t]he adoption of the Sharia appeared to be an effort to pacify a section of Muslims [the 'conservatives'] who had consistently agitated against the secular nature of the country and who perhaps were seen either as a threat

to the tenure of the political office-holders or as a support base that could not be neglected on the basis of political calculation.^{’xxiii} Furthermore, Adesoji maintains that ‘the conservatives insist on a unitary view of society that recognizes no difference between state and religion, and they advocate making Nigeria an Islamic state administered according to the principles of Sharia Law. For them, all Muslims belong to the “Umma” [Community], and the idea of a secular state is atheistic or syncretistic.’^{’xxiv}

However, this view does not enjoy popular support among ‘Liberal Muslims’ who insist that such an interpretation does not entail Islamizing Nigeria nor does it translate to the rejection of the constitutional provisions of the secularity of the Nigerian state.^{’xxv} It is against this complex and turbulent background that Jama’at ahl al-sunna li-da’wa wa-l-jihad emerged and has since gained international notoriety as Boko Haram.

Boko Haram insurgency

Since July 2009 Boko Haram’s attacks, which show evidence of increasing coordination and sophistication, have added a further complication to the festering security and constitutional challenges in northern Nigeria. Boko Haram’s official name Jama’at ahl al-sunna li-da’wa wa-l-jihad places the group squarely within the context of a larger family of jihadist Muslim Jama’a groups that include the Jama’a Islamiyya of Egypt and the Jemaa Islamiyya of Southeast Asia (Indonesia). Boko Haram’s methodology may be deduced from the behavioral pattern of these Jama’a type groups: ‘establishment of small groups of a diffuse nature, which then infiltrate the parent non-Muslim or pseudo-Muslim society, with the ultimate aim of establishing the Muslim Sharia state through a final violent stage.’^{’xxvi}

Boko Haram is vehemently opposed to what it perceives as a western-based incursion that erodes traditional values, beliefs and customs among Muslim communities. Mohammed Yusuf, the group’s founder, told the BBC Hausa in 2009: ‘Western education is mixed with issues that run contrary to our beliefs in Islam... our land was an Islamic state before the colonial masters turned it to a “kafir” [infidel] land. The current system is contrary to true Islamic beliefs.’^{’xxvii} This statement seems to confirm Juergensmeyer’s contention that religious terrorists have goals of returning society to an ‘idealized version of the past,’ and are therefore ‘anti-democratic,’ ‘anti-progressive,’ and anti-constitutional.^{’xxviii}

Boko Haram’s ultimate objective is to overthrow the Nigerian government and to create an Islamic state under the supreme law of Sharia. In July 2013, Boko Haram Islamists stormed a boarding school in Yobe State in northeastern Nigeria and burnt 29 students and one teacher alive. Following the killings, Abubakar Shekau, the current leader of the group, stated that ‘The Quran teaches that we must shun democracy, we must shun the constitution, [and] we must shun Western education.’^{’xxix}

In the already highly polarized Nigerian society, where more than 150 million people are divided into nearly 350 ethnic groups, out of which about 50% are Muslim and 40% are Christian, the potential for violent escalation along ethno-religious lines looms large. Adesoji argues that while the implementation of Sharia in twelve northern states appeared to have pacified some conservative Islamic elements in the north, ‘its limited application was still condemned by the Boko Haram group. For Adesoji, this explains why ‘the full implementation of Sharia not only in the north but in the whole country remains the advertised cause of the Boko Haram jihad.’^{’xxx}

Nigeria’s Territorial Integrity

Attacks by Boko Haram on schools in north-eastern Nigeria have been rampant. In March 2014, roughly 85 secondary schools were closed and the Borno State government, following increasing attacks on schools by Boko Haram, sent over 120,000 pupils home. In April 2014, Boko Haram gained worldwide publicity and social media activism (through the #BringBackOurGirls campaign) when it kidnapped over two hundred schoolgirls sitting their final exams at the town of Chibok in Borno State.^{xxxii} These girls have not been rescued yet. This is despite concerted efforts by the US, the UK, France, China and Israel to support Nigeria's efforts to turn the tide of the insurgency and rescue the Chibok girls being held hostage in the forest of Sambisa. The Nigerian government's inertia to take any action in response to the Chibok abductions, combined with the confusion over the actual number of girls kidnapped, drew widespread local and international condemnation.^{xxxii}

Meanwhile, Boko Haram has intensified its violent campaign to the point of threatening the territorial sovereignty and integrity of the Nigerian state. National security forces seem to lack the equipment, training and motivation to prevail over the sect. In the latest development, Boko Haram declared a caliphate in Gwoza, Borno State. The sect decimated the whole community, carrying out summary execution in the process, before hoisting their black and white flags at different locations. In a recent video, Abubakar Shekau, the leader of Boko Haram, said 'thanks to Allah who gave victory to our brothers in Gwoza' which is now 'part of the Islamic Caliphate.' Shekau declared that Gwoza now has 'nothing to do with Nigeria.'

The United Nations humanitarian office confirmed reports that Gwoza was under control of the militants and that the group had seized control of Damboa, which has earlier retaken by the Nigerian military. Boko Haram has also conquered other areas near Gwoza in Southern Borno, as well as large swathes of territory in northern Borno and portions of Buni Yadi in neighbouring Yobe State. In declaring a caliphate, Boko Haram becomes the first Islamist organisation in Africa to emulate the Islamic State group, which controls vast areas of eastern Syria and northern Iraq.

State of emergency

The relentless attacks of Boko Haram have twice compelled a declaration of a state of emergency by fifteen local governments across four states in northern Nigeria. But such measures have failed woefully to stamp out Boko Haram; instead, they have strengthened the group's resolve against the Nigerian state, its citizens and Western diplomatic missions.

Advocates of a coercive approach to tackling terrorism argue that force rather than dialogue is more effective in dealing with terrorist organizations. Some argue that the Nigerian government had no choice but to take military actions against Boko Haram. As argued by a prominent Nigerian constitutional lawyer, Yahaya Mahmud, 'No government anywhere will allow a group to usurp part of its territorial sovereignty. The declaration of a state of emergency was necessitated by the constitutional obligations to restore a portion of Nigeria's territory taken over by [Boko Haram] which involves the suspension of constitutional provisions relating to civic rights.'^{xxxiii}

Other observers, however, worry that the 'stick' response of the Nigerian government will force Boko Haram to shift their bases, with grave consequences for Nigeria and neighboring countries.

Conclusion

The Sharia debate in Nigeria has been partially mediated by its assimilation into the wider, ongoing debate about constitutional reform in Nigeria. In fact, the quest for constitutional review has brought to light the polarized Christian and Muslim positions on the Sharia controversy. On one hand, Christians have favoured constitutional reforms that would affirm the secularity of the Nigerian state and further limit the

current recognition for Sharia courts. Muslims, on the other hand, have called for Sharia-enhancing constitutional changes, including (a) restoration of sub-unit political autonomy to the level attained under the First Republic; (b) creation of Sharia courts in all 36 states of the federation (rather than just the north) to meet the needs of Muslims in the south; (c) explicit grant of unlimited jurisdiction to the Sharia Court of Appeal; (d) establishment of a Federal Sharia Court of Appeal (FSCA); and (e) a broad constitutional recognition for Sharia as a 'legal and ideological system of its own, and as an alternative to, or coequal with, the imposed western legal and ideological system.'^{xxxiv} Given the diametrically opposed Muslim and Christian positions on the appropriate constitutional status of Islamic law in Nigeria, a constitutional review process on Sharia is more likely to result in a political deadlock in lieu of delivering positive constitutional change. Be that as it may, it is important to note R.T. Suberu's salient point that, for all the talks about its pathologies and deficiencies, 'Nigeria's fledging federal democracy has engendered the space not only for the expression and expansion of Muslims' demands for Islamic law implementation but also for the management and sublimation of those demands, through constitutionalism and constitutional reform debates, the decentralization of Sharia implementation, integrative federal character rules, judicial review, and the pluralistic articulation of critical civic voices within the Muslim community.'^{xxxv}

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End Notes

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