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Review

Putting a halt to terrorism: Boko Haram and the need for constitutional activism in Nigeria

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Long before British colonialists laid siege on the territory consisting present day Nigeria, there was in existence already defined legal systems for the administration of public life as well as justice in the different emirates, kingdoms, towns, cities, villages and hamlets. In the Northern part of Nigeria, the Islamic Shariah system was dominant whilst in areas where Muslims were not in the majority, the people were guided by their native laws and customs. In a similar vein, in the South, public life, government and the private affairs of the people was regulated by native mores and custom. In this paper, this author asserts that the manner in which, the British colonised the territory now known as Nigeria, the forced union of people without similar value systems and the lack of constitutional activism to cater to the needs of the people in this forced entity is the reason behind acts of militancy, terror and specifically, the acts being carried out by the group known as Boko Haram. There is a need therefore, to have a constitution or document which truly reflects the aspiration and yearnings of the citizenry. The author concludes that the Constitution of the Federal Republic of Nigeria should be reviewed without the usual placing of limits or 'no go areas.' There is also a need to cater to provisions in the current document with a view to resolve inherent lacunas upon which militancy and terror thrives.

Key words: Insurgency, Boko Haram, constitution, secularism, religion.

INTRODUCTION

The current Constitution of the Federal Republic of Nigeria (CFRN) which is the ground norm of the country is the 1999 Constitution (as amended). That Constitution at best is a gift from the military regime of retired General Abdulsalami Abubakar. It is an irony, somewhat, that the preamble begins with the phrase "WE THE PEOPLE of the Federal Republic of Nigeria." It does not really cure; neither does it take care of the many multifaceted problems of the various federating units of the country.

This situation led to a plethora of calls for the convocation of a sovereign national conference (SNC) in order to re-determine the continued existence of Nigerian as a country, and if need be, the Conference should midwife a clearer and more defined constitution that mirrors the needs of the people rather than a document handed over at the departure of a military regime. Since the Constitution is the basis for the existence of the present territory known as Nigeria, it must mirror the thoughts and aspirations of the people.

Anything less, will give room for militancy and terror activities as we are currently witnessing in the country.

Many issues that are germane to Nigeria's continued existence as a nation and which give room to insurgency need to be addressed by a no-holds-barred constitutional conference. States cashed in on a lacuna in the 1999 constitution to implement criminal sharia in within their domain, a lack of action by the federal government witnessed the rising of the Islamic group, *Boko Haram* seeking for full blown sharia in all northern states. This author opines that Constitutional activism can cure the terror problem in Nigeria if certain vexed questions can be addressed. Namely, is Nigeria truly a secular state?

Where a part of the people making up the territory feels that their unit or locality is not a secular one, how does the Constitution address that situation? Since a number of states have declared Shariah Legal System in the North, is this not a ground upon which Boko Haram jihadists can rely on to have full-fledged Shariah and demand for a return of the very legal system in operation in pre-colonial northern Nigeria before the advent of British colonial rule? This paper will also seek to address the Boko Haram question with a view to providing solution via constitutional amendments.

LITERATURE REVIEW

Nigeria's constitutional development is a replica of a people seeking to find a reason for their continued co-existence despite living in a multi-religious and multi tribal setting. Unfortunately, the country is yet to witness the birth of a constitution that can be described as a document representing the true wishes of the people. One of the impediments to constitutional activism in the country has been identified as the *locus standi* bottle neck. In *Adesanya v President of the Federal Republic of Nigeria,* the court held, and that became the position of the law for a long time, that only persons with personal standing can bring an action alleging a breach of the constitution. A learned author notes that that requirement is no longer the law as enunciated by the Court of Appeal in *Fawehinmi v Federal Republic of Nigeria*as far as constitutional law is concerned. By the ruling in Fawehinmi's case, it appears that private citizens can test constitutional provisions via the court. Court decisions in such matters are bound to have an effect on Constitutionalism.

Writing on the need for the people to determine whether they should continue to exist as a nation, Prof Ango Abdullahi stated that even old democracies like the United Kingdom are grappling with whether or not Scotland and Northern Island should continue to be a part of Great Britain. Out of the old India that gained independence in 1948 from Britain, three countries have emerged namely, India, Pakistan and Bangladesh. Whilst other democracies have enjoyed the freedom to determine their continued existence via conferences and referenda, the ruling governments in Nigeria usually label any discussion regarding the continued existence of Nigeria as a country as a 'no go area' for any of the debates. This limitation to my mind is a clog in the wheel of the progress of constitutional development in Nigeria.

The question whether or not Nigeria is a secular state has been the subject of debate even though section 10 of the 1999 Constitution expressly states that neither the federal government nor the governments of the state shall adopt a state religion. Bamaguje in his article criticises the decision of Governor Suntai of Taraba state for suspending government house employees who failed to turn up for prayer meetings at the government house. He notes that the organisation of Christmas carnivals by states like Cross River with public funds amounts to adoption of a state religion. The Constitution needs to clearly define our secular status beyond section 10 of the 1999 Constitution. The use of public funds to sponsor pilgrims on pilgrimage needs to be clearly discouraged. For example, a state like Sokoto that is clearly dominated by Muslims will spend state funds on sponsoring trips of Muslim citizens to hajj to the neglect of the Sokoto citizen that is a Christian. The argument that the Constitution allows for the creation of Sharia courts by states who desire it to be the bedrock for the implementation of Sharia by some states in the north is a flawed interpretation of the constitution if read in juxtaposition with the provision section 10 of the same constitution. Some have argued that Nigeria is not a secular state but a multi-religious state. In his inaugural lecture on "Islamics: The Conflux of Disciplines", Prof. IshaqOloyede argues that Nigeria is a multi-religious nation. He described Nigeria as 'A *Daru 'l-Mu 'ahadah'* (treaty state) under which Muslims are obligated to live peacefully and collaborate with fellow citizens for the development of the nation. This paper posits that a Constitution that truly emanates as a product of discussions by the Nigerian people should define whether or not, in unambiguous terms, Nigeria is a secular or multi religious state.

The implementation of the Shariah in states in the north and the subsequent lack of action on the part of President Olusegun Obasanjo's administration could be described like the old serpent that has now turned into a dragon. It is possible that the lack of action gave room to the rise of the group popularly known today as *Boko Haram.* One of the thrusts of their insurrection is for the full blown implementation of the Shariah in northern Nigeria. One of the recommendations to stem the insurgency in the country by a crisis resolution group is that the government must begin to tackle the root causes of the growing radicalism and ethnic militancy being witnessed in the country. The position of this paper is that a no holds barred constitutional conference can provide a platform for curing the disease from the roots.

Synopsis of Constitutional Development in Nigeria

Before Nigeria came into existence, the territory now making up the country was made up of various kingdoms, emirates, towns, cities, villages and hamlets. In the North, there were the Sokoto Caliphate, the Kano Emirate, the Zazzau Emirate, the Bida Emirate, and the Kanem Borno Empire which formed the bulk of the majority. The minorities included Berom Kingdom, the Tiv Kingdom, the Gwari Kingdom as well as the Igala Kingdom to mention but a few. In the South, there were the Bini Kingdom, Oyo Kingodm and the various Igbo groups forming the majority. Those who constituted the minorities were the Isokos, the Urhobos, the Ikas, the Ikwerres, the Ijaws and the Itshekiris. It is worthy to note that each of these people groups enjoyed self-rule and were not dependent on others apart from where there were treaties for trade and where territories were taken by conquest.

It is worthy to note that whilst the British took over the territory constituting the present day Nigeria, the French took over all the neighbouring countries namely Cameroun, Chad, Niger and Benin. The result of this is that Nigeria is surrounded by francophone nations and this could have been the reason why the British territories within the midst of francophone nations were made to become one country without taking into cognizance the

difference in the lifestyle, culture, religion and attitude of the people making up pre-colonial Nigeria.

In 1914, Lord Lugard supervised the amalgamation of the north and south protectorates and as a result; a new country named Nigeria was born. Prior to the amalgamation of the North and Southern Protectorates, it is worthwhile to note that Lagos was occupied in 1861 and was included in the Southern Protectorate in 1906. Constitutional development in Nigeria was kick started in the year 1946with the Sir Authur Richard Constitution. That Constitution provided for a central legislative body for the entire country in addition to three Regional Houses for South West, South East and the North.

The Macpherson Constitution which followed the Richard Constitution came into effect in 1952. The highlight of the Macpherson Constitution was the increase in regional autonomy for the regions especially with regards to making executive decisions. Following this development, there was a demand for a greater autonomy for Nigerians as far as leadership was concerned. This resulted in the Constitutional Conference held in London in 1953 and in Lagos in 1954. The Conference empowered the Federal Government with exclusive jurisdiction on matters involving aviation, census, police, custom, defence, money, immigration, menials, shipping, transport, trade and commerce and communication. Residual matters that were not included in the legislative list came within the purview of the regional houses of assembly.

A further Conference held in London in 1957 produced the appointment of a Prime Minister on August 1857 and saw to the creation of a bi-cameral legislative house for the Federal Government. In 1960 Nigeria attained self-rule with Sir Abubakartafawa Balewa as Prime Minister and Dr. Nnamdi Azikiwe as Governor General. The 1960 Constitution is better known as the Republican Constitution.

Six years after Nigeria attained independence, the 1960 Constitution failed. The political problems in the country could not be resolved with the 1960 Constitution. One of the bottlenecks of the 1960 Constitution was that it was structured after the Westminster model. There was a prime minister who had executive powers with a ceremonial president. That model did not quite fit into our type of society where whoever wielded executive power does so without restraint. This led to the collapse of the First Republic vide a bloody military coup lead by Captain Chukwuma Nzeogwu in January 1966. This was the beginning of the foray of the Nigerian military in constitutional development in Nigeria. Since then, we have not had a “Peoples’ Constitution” in Nigeria.

The 1979 Constitution that followed the 1966 Constitution was brought into being in order to facilitate a transition from Military rule to Civilian rule. At the twilight of General Olusegun Obasanjo’s regime in the late 70s, the Supreme Military Council (SMC) constituted a Constitution Drafting Committee (CDC) for the drafting of the 1979 Constitution. Very significantly, the 1979 Constitution jettisoned the Westminster system of government and adopted the American Presidential system of government. The Constitution now provided for checks and balances. Unfortunately, the 1979 Constitution did not last for more than four years as the military once more, took over the reins of government vide another *coup de tat* on the eve of 1984. Whilst the regime of Buhari/Idiagbon held sway after toppling the administration of Alhaji Shehu Shagari, they did not as much make any foray into the realm of constitutionalism apart from suspending parts of the 1979 Constitution. This easily gave room for the overthrow of their regime by General Ibrahim Badamasi Babangida. Perhaps Babangida’s botched 1989 Constitution promulgated as Decree No. 12 of 1989, could be likened as having clean water in a dirty container. Whilst the people were consulted in the drafting of the constitution, the outcome was clearly influenced. It was more of political engineering than of popular consultation and participation. Babangida’s 1989 Constitution ‘died’ while at infancy just like his transition to civil rule programme.

General Abacha took over from Chief Ernest Shonekan in 1993 in a palace coup. Abacha made an attempt to come up with a new constitution. His 1995 Constitution did not see the light of day as it was a still birth as far as constitutional development in Nigeria is concerned.

The 1999 Constitution was a brain-child of the military regime of General Abdulsalami Abubakar. It is worthy to note that the regime was in a hurry to relinquish power to a democratically elected government. The preamble stating “WE THE PEOPLE…” is in fact an irony because there was little time to consult the people. This has also been described as a false claim. Many of the provisions of the 1999 Constitution has sparked off a number of controversies that require for not just amendments but for a more holistic and realistic constitution with the input and acceptance of the ordinary Nigerian. The 1999 Constitution has provided for an exclusive legislative list that can only come within the purview of the National Assembly. Thus, state assemblies are disempowered from legislating on those items. It is worrisome; in the sense that, although we operate a federal system, it appears that we have a unitary government at the centre with so much power. Where there is a conflict between an Act of the National Assembly and a law made by a State Assembly that of the former shall prevail.

Under the 1999 Constitution, State Governors, even though they are regarded as the chief law officers of their states, cannot do much when it comes policing their states. There has been a controversy whether or not there should be state police in the country even before that dust of controversy would settle, the conflict between the Executive Governor of Rivers State, Rt. Hon. Rotimi Amaechi and the Police Commissioner of the State showed that the states had little to contribute when it comes to making security decisions. The Commissioner

of Police of the various states report to the Inspector General of Police who in turns reports to the President and Command-in-Chief. It therefore means that unless the Executive Governor of a State is in good relationship with the President, the state may not enjoy the 'privilege' of police protection. This situation can hamper the quick intervention of the police in quelling acts of terror in their state. A situation where the security aides of a sitting Executive Governor could be withdrawn on account of his non-support of the sitting President and Commander-in-Chief is a misnomer in a democracy.

This writer believes that Section 275 of the 1999 Constitution has created room for controversy. The section provides:

"There shall be, for any state that requires it, a Sharia Court of Appeal."

Section 277 provides further that the:

"Sharia Court of Appeal of a state shall in addition to such other jurisdiction as may be conferred on it by the law of the state, exercise such appellate and supervisory jurisdiction in civil proceedings involving the questions of Islamic Personal Law, which the court is competent to decide."

It follows therefore that the Constitution recognizes Islamic Law. The confusion here is that the same Constitution in Section 10 prohibits state religion but goes ahead to recognize Islamic personal law in Section 277. It is also noteworthy that even though, the Constitution specifically mentions 'Islamic Personal Law,' some states led by the controversial Alhaji Ahmed Sanni Yerimah went ahead to adopt full blown Shariah within their jurisdictions. The punishment for the crime of theft upon conviction in Zamfara became amputation of the arm. The first 'victim' of Yerima's Sharia Code was one Mallam Bello Jangebe who was prosecuted and convicted for stealing a cow. His right hand was amputated on 22 March 2000. A woman, Safiya Hussaini, was accused of getting pregnant outside wedlock. She was supposed to be stoned to death after her conviction but she was spared due to international outcry.

This writer believes that urgent steps need to be taken to preserve the secular stance of the government and people of Nigeria or if the people so decide, that in parts of the federation state religion should be adopted then this should be done. It must be emphasised that to do otherwise like the Sharia states have done is amending the Constitution via the back door.

The Boko Haram Insurgency in Nigeria

The group popularly known as *Boko Haram*is responsible for the deaths of hundreds of Nigerians as well as the destruction of properties running into billions of dollars. In April 2014, the group abducted over 300 school girls in Chibok, Borno State, Nigeria. The group claimed responsibility for the bombing of the UN building Abuja, the Nyanya Motor Park, the Police Headquarters, This Day Premises, a number of churches in the North to mention but a few.

The group claims to be fighting for the entrenching of state religion in Nigeria. They have no respect for the Constitution of the land and pledge allegiance only to Islam. It is noteworthy that the name *Boko Haram* (which means Western Education is sin) seems to suggest that the group fights only against western education. The group seeks the entrenchment of Islamic law and fights against western culture. Due to the activities of *Boko Haram* Nigeria is now ranked as the 7th most terrorized country in the world.

The name *Boko Haram,* was coined by the public to refer to the group who prefer to be known to as *Jama'atu Ahlis Sunnah Lidda'awatiWal Jihad'* meaning "people committed to the propagation of the prophet's teaching and jihad. The founder of the sect Mr. Mohammed Yusuf started the group as an itinerant preacher and gradually won the hearts of the youths through his radical Islamic ideology. It was first of all known as the *Yusufiyya* movement. It is noteworthy that the *Boko Haram's* violence has been motivated primarily by rejection of Nigeria's secular stance as provided for under section 10 of the 1999 Constitution. It is therefore a constitutional issue and must be addressed if we must win the war against terror in the country.

It has been suggested that *Boko Haram* is largely a product of wide spread socio-economic and religious insecurity. This writer agrees to the extent that Mohammed Yusuf started out by preaching the gospel against the unjust oppression of the poor and it was thus, easy for the many youths in the north to join the sect as they found succour in such a company that speaks about equality and justice for the down trodden. This is especially so as many of the youths are unemployed and remain without any welfare support from the state. However, it must be noted that as it is presently constituted after the demise of Mallam Mohammed Yusuf, *Boko Haram's* major objective is the Islamisation of (Northern) Nigeria; implementation of the Shariah and the purification of the practice of Islam. These objectives are constitutional issues that must be addressed.

This paper is concerned more with providing a Constitutional solution to the *Boko Haram* imbroglio rather than restating the activities of the group. The study is thus limited to a constitutional solution to the crisis and will not consider the *modus operandi* of the sect, their source of funding, their area of operation, external allies, opponents and membership.

Constitutional Solution to the Boko Haram Insurgency

This paper has identified that long before the British occupied the territory presently constituting Nigeria, there

was in existence, in the north of the country, a legal system based on the principles of Sharia. The imperialists regarded Islamic law as a form of customary law and also considered some Islamic law rules as repugnant to natural justice, equity and good conscience. Thus in the case of *Mariyama v Sadiku Ejo*an Islamic law principle which provides that when a child is born within 10 months after divorce belonged to the divorced husband was considered repugnant to natural justice, equity and good conscience. The question now remains. If the people so wish for their life to be governed by what standards should 'natural justice, equity and good conscience' be judged?

Should the Constitution not take into account the religions of the people in Nigeria and grant the states that so wish to have state religions? How do we determine whether or not that state should be a secular state if we do not reach a decision by a referendum and subsequently come up with a more popular constitution? This writer believes that the agitation by *Boko Haram* will lack merit and fizzle out if the people produce a true "WE THE PEOPLE..." constitution that states whether or not there should be a state religion.

CONCLUSION AND RECOMMENDATIONS

Nigeria is a heterogeneous society and we cannot pretend that Lord Lugard's promulgation in 1914 that united the north and the south forming the entity called Nigeria has unified the people of Nigeria. Beginning from 1966, Nigeria has witnessed one form of crisis or the other bothering on our continued existence as a people. From the three year civil war to sectarian crisis and the recent *Boko Haram* crisis, there is a need to go back and look at the document that is the ground norm of the land and which is also supposed to be the law unifying the Nigerian people.

If we must continue to be a united country, we must refer to, and where necessary redesign the document that keeps us together. It is pertinent to state that the Constitution as is is a document that supports a 'forced marriage.' In such a situation, there is bound to be agitation and where the voice of those agitating seems not be heard, there agitation may take the form of a confrontation.

This paper recommends that steps should be taken to produce a new Constitution for the federation. It must be stated that our continued existence must not be a no go area. Nothing in International law stops the dissolution of countries into smaller sovereign nation states. If we continue to pretend that all is well with our continued unity as a nation, how do we justify the current wanton destruction of lives and properties based on the demand for the creation of a state religion? If the state can determine, as we are in a democracy, that the majority of the people will prefer a secular state, then all must accept this decision but it does not make sense if the people are forced to live in a secular state whilst the favour a to have state religions. It is important therefore that the people be allowed to make this choice.

It is also important that Constitutional reviews be current and on-going. We must ensure that where constitutional amendments are required for the general benefit of the nation, then this should be the case.

REFERENCE

AC Okoli, P Iortyer (2014). "Terrorism and Humanitarian Crisis in Nigeria: Insights from Boko Haram Insurgency." *Global Journal of Human-Social Science*, 2014: 4.

Abdullahi, Ango (2012). "Nigeria - 1914 to Date: The Chequered Journey So Far." *Vanguard Newspaper*, 2012.

Aghalino SO (2006). "Constitutional Development in Nigeria." *Constitutional Development in Nigeria.* Ilorin: University of Ilorin, n.d.

Bamuguje, Nafata. "Wither Nigeria's Seculiarism." *Gamji*, n.d.

Community Rights Initiative (1999). "We Cannot Go On Like This." *Conference of the Peoples of the Niger Delta and the 1999 Constitution.* Port Harcourt, 1999. 1.

Higazi A (2013). "Nigeria: Boko Haram's evolving Terror." *All Africa.Com*, 2013: 1.

Mahdi, Hauwa (2006). *Shariah in Nigeria: A Reflection on the Debates.* Paper Presentation, New Delhi: Indian International Center, 2006.

"NADECO Faults 1999 Constitution Calls for Soverign National Conference." *PM News*, February 2012.

Nwabueze, Ben. *Ideas and Facts in Constitution Making.* Ibadan: Spectrum Books, 1993.

Punch Newspaper. *Police, SSS May Withdraw Amaechi's Security Aides.* Lagos: The Punch, n.d.