Journal of Law, Policy and Globalization
ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online)
Vol.34, 2015

Legal Pluralism in Africa: Challenges, Conflicts and Adaptation in a Global Village

Rhoda Asikia Ige
MA (Ibadan) LLM (Lagos) Lecturer-in-Law Department of Jurisprudence & International Law University of Lagos Nigeria

Abstract
Legal Pluralism in Africa came into being as a result of colonialism, which has impacted all areas of human endeavour. However, the amalgamation of foreign laws with indigenous laws often elicits opportunities for challenges and conflicts in interpretation and enforcement of the laws in many African societies. The paper's focus is limited to British Africa and with a particular reference to Nigeria; the paper will consider the inherent deficiencies in legal pluralism; and it will examine its 'success' in a global village which tries to see law as a unifying tool.

Introduction

The co-existence of two or more systems of law in nearly all countries in Africa today can be traced to two main reasons: 1) the countries which came under the domination of one or more European powers following the Berlin Conference in 1885 which led to the partition of Africa by Europeans. 2) the incursion of Islam and the attendant imposition of Islamic Law by the Jihadists; Islamic law tends to operate in some jurisdictions as indigenous law, this is evidence in Ghana, Sierra Leone, and Uganda or as a distinct system of law as it is practiced in Kenya, Somali, Tanzania and Northern Nigeria.

The colonial powers in the various African states approached the problem posed by legal pluralism differently; the continental European powers such as France, Italy, and Spain favour conferring 'civil status' on natives, the intention was to enable any native who was sufficiently educated to opt out of indigenous laws. The British Colonial policy defers in that it favours English Law could be introduced into the colony to displace indigenous legal system. The British system also gives recognition to indigenous laws that are not repugnant to natural justice, equity and good conscience or inconsistent with the exercise by her Imperial Majesty of her sovereign powers[1].

This article will examine legal pluralism in Nigeria with a view to ascertain the veracity of its success. The first part of the article gives a succinct definition of legal pluralism, thus depicting its purport within a legal framework; the second part of the article examines legal pluralism in Nigeria; it proceeds from the introduction by offering a detailed historical analysis of legal pluralism and its conjectures in Nigerian legal system. The next part of the article discusses the challenges, the conflicts and adaptation of legal pluralism in a global village, the discussion lays emphasis on case laws to depict the failure of legal pluralism in addressing some local issues that are germane to the indigenous people of Nigeria. The final part of the article while appraising legal pluralism in Nigeria concludes that the intention of the colonial masters which have been served by its introduction have however, served dual purpose in legal implementation, on the one hand legal pluralism promoted culture, on the other hand in some cases it became a vehicle of striking down age long practices in some societies.

Legal pluralism: What it is

It is generally defined as a situation in which two or more legal systems coexist in the same social field.[2]
Merry, in referring to Popsil stated that his pioneering work on legal levels claims that 'every functioning subgroup in a society has its own legal system which is necessarily different in some other respects from those of other subgroups. By subgroups he means units such as family, lineage, community, and political consideration that are integral parts of a homogenous society, hierarchically ranked, and essentially similar in rules and procedure.[3]

Hooker provides a masterful and comprehensive over view of legal pluralism by defining legal pluralism as 'circumstances in the contemporary world which have resulted from the transfer of whole legal systems across cultural boundaries.[4]

Legal pluralism is also can be defined as: the existence of multiple legal systems within one geographical area. Plural legal systems are particularly in former colonies, where the law of a former colonial authority may exist alongside more traditional legal systems. When these systems developed, the idea was that

[1] Oluwole Agbede, Legal Pluralism (Shaneson C I Ltd Ibadan 1991) 1-2
3 Sally Engle Merry, Legal Pluralism (1988) 22(5) Journal of Law and Society 869
[3] ibid
[4] M B Hooker, Legal Pluralism: An Introduction to colonial and neo-colonial laws (Clarendon Press Oxford, 1975) 1

certain issues (e.g., commercial transactions) would be covered by colonial law, while other issues (e.g., family and marriage) would be covered by traditional law. Over time, these distinctions tended to break down and individuals would choose to bring their legal claims under the system and they thought would offer them the best advantage.[1]

For the purpose of the discourse, I adopt the definition given by Griffith as my working tool; this is because my analysis stems from the premise of 'plural systems in a former colony, where a former colonial law exist alongside of traditional legal systems.

According to Tamantha, Legal pluralism is everywhere. There is, in every social arena one examines, a seemingly multiplicity of legal orders, from the lowest local level to the most expansive global level. There are village, town, or municipal laws of various types; there are state, district or regional laws of various types; there are national, transnational and international laws of various types.[2]

I tend to agree with the observation given by Tamantha in that legal pluralism exists everywhere; a cursory look at different societies and with reference to Nigeria shows the multiplicity of laws within the different groups of people living within the same geographical area.

Legal pluralism is unique in the sense that not only are there diversity of laws but these laws are uncoordinated and give room for competing claims, conflict of demands and different interpretations of laws, thus in turn creates uncertainty in the body of legal knowledge.

Law claims to permeate every strata of life, but legal pluralism challenges this claim, because in essence legal pluralism is a confluence of history, politics, sociology and the culture of the people whose colonial law supplants.

Legal Pluralism in Nigeria

The colony of Lagos came into being in 1861 with the conclusion of treaty of cession between the Oba of Lagos, King Dosunmu and his chiefs and the British Crown. English law was introduced to Lagos in 1863[3] and a court was established, the Supreme Court of Record with all the jurisdiction and powers vested in Her Majesty' High Court of Justice in England.[4] The court was to administer the common law, the doctrines of equity and statutes of general application which were in force in England on July 24, 1876. Also by a series of 'agreements of protection' with the local chiefs, the Government of Lagos gradually extended its influence over the Yoruba people of the neighbouring towns. These areas became colony and protectorate of Lagos which term was to include nearly the whole of the Yoruba Kingdom by 1905.[5]

The Protectorate of Southern Nigeria has had British influence since 1861 through the ports of Benin, Brass, Calabar and Bonny with the jurisdiction of a British Consul appointed for the purpose of regulating legitimate trade between British Merchants and the people of the coastal areas. In 1885, a number of British Merchants formed the Royal Niger Company and obtained a Royal Charter for the purpose, the intention mainly was towards monopoly of the trade along the banks of the River Niger where they already had considerable influence. The main policy of the company was to keep the territory open for trade, while the natives are left to regulate their matters among themselves. However, the Berlin Conference of 1885 brought an international dimension to the existing arrangement. The area was declared a Protectorate, a new consul Claude MacDonald was appointed, he established a number of Consular courts which had jurisdiction over non-natives. However, by treaties with local chiefs these courts were to exercise criminal jurisdiction over natives. The creation of courts with civil and criminal jurisdiction over the natives began in 1893.

The Protectorate of Northern Nigeria consisted of chiefdoms ruled by powerful Muslim chiefs; most of the Northern areas have been influenced by Islamic religion for more than two centuries before the advent of the British and the Niger Company. Colonel Lugard was appointed as the first High Commissioner of the region, subsequently Sir Charles Orr was appointed as High Commissioner for the region. He was faced with two tasks, first the menace of inter-tribal wars and slave trading which he had to combat and second, securing the goodwill of the chiefs and people and establishment of an efficient administrative system.

He successfully accomplished the first task, but the second task was met with stiff resistance by the chiefs and people who opposed alien rule, the opposition to British rule was essentially religious and this was assuaged by a policy of religious tolerance.[6]

Unlike the positions in other parts of Nigeria, the Emirs in Northern Nigeria had jurisdiction to inflict capital punishment but their judgement was subject to the High Commissioner's confirmation. The policy that allowed the Emirs to have their own courts created problems for later administrators; this led to Colonel Fredrick

[1] John Griffiths, 'What is Legal Pluralism? (1986)24 Journal of Legal Pluralism 1
[2] Brian Z Tamantha, 'Understanding Legal Pluralism: Past to Present, Local to Global' (2008) 30 Sydney Law Review 375
[3] Ordinance No 3 1863
[4] Gold Coast Supreme Court ordinance of March 31, 1876 (No.4 of 1876)
[5] Above n2
[6] ibid

Lugard to set up courts-Supreme Courts, Provincial Courts and Cantonment Courts to adjudicate on disputes involving non-natives and for the administration of the imperial laws. Native courts were also created for the natives, and there was no means of appeal from one to the other. Political officers exercised supervisory control over the native courts and appeal lay from the native courts to the resident officer with further right of appeal to the High Commissioner.

In 1914 the Northern and Southern Protectorates were amalgamated resulting in the birth of Nigeria, Lord Lugard was appointed the first Governor of the Colony and Protectorate of Nigeria; he established a uniform system of courts with some modifications.

In 1933, the British introduced a legislation which enables the British courts to entertain appeals from the native courts. It was in 1959 that Islamic law was excluded from the sphere of criminal law and confined to the field of personal law.[1]

The colonial legal system in Nigeria can be summarised as follows: 1) the codification of customary law; 2) the application by state courts of unwritten customary law in a fashion akin to the common law; 3) the creation or recognition of informal customary courts run by local leaders; and 4) the establishment of British types of courts presided by trained legal minds.

The customary law recognised by the system was limited to family law issues, minor crimes, issues unique to customary law and minor disputes. The various ways in which to accommodate different interests were not entirely successful because of the application of Repugnancy test in deciding some cases.

Chanock in offering explanation for failure of admixture of laws argued that:

'The basic problem is that local norms and processes could not be removed from their original medium without losing their integrity. The essence of customary systems may be said to be lain in their processes, but these were displaced, and the flexible principles which had guided them were now fed into a rule honing and using machine operating in new political circumstances.[2]

The existence of customary courts, sharia courts and British type of courts posed complex problems of not only jurisdiction but also interpretation of law. This dual system influenced one another in various ways, including exchanging or recognising the other norms.

According to Tamanaha,

'often the official law was markedly distant from the local law, set forth in the language of the coloniser which many indigenous people did not speak, its effective reach limited to urban areas where institutionalised presence of the state legal system was strongest.

The presence of multiple legal systems or legal pluralism elicits challenges and conflicts in the Nigerian legal system. The problem relates to the choice of law which is made rather complex by the fact that the factor which connect an individual with the indigenous system; on the other hand, the factor which connects a person to the state law, thus leads to the recognition of the plurality of laws in very many situations, to the to this I now turn.

Challenges, Conflicts and Adaptation in a Global Village

First Nigeria became a Federation in 1954 of five constituent regions.[3] We now have thirty six constituent states excluding the Federal Capital Territory of Abuja[4]. This arrangement has brought about first, conflicts between customary law, sharia law and state law; second, the problem of choice of law and third, the co-existence of customary law with received English law; fourth, each ethnic group has its own customary law which depicts significant differences between one another in many respects.[5]

Nigeria is at a cross roads of culture conflict. Our social and legal institutions are an amalgam of inveterate institutions introduced into the country by West European and Arabian civilisations. The influence of these exotic customs, laws and traditions are pronounced in every area of our lives.

The degree of recognition accorded customary laws in British territories varied from one territory to the other. In Nigeria, the Nigeria Order-in-Council enjoined the Governor to have regard in the exercise of his legislative power, to native law and custom except in so far 'as the same may be compatible with due exercise of His Majesty's power and jurisdiction, or clearly injurious to the welfare of the natives'.

The Order-in-Council recognises the need for the Governor to preserve acceptable rules of native law.

The Supreme Court Ordinance of 1872 provided for the enforcement of rules of native law and custom that were not repugnant to natural justice, equity and good conscience or incompatible with any Ordinance for

[1] Oluwole Agbede above n2

[2] Martin Chanock,'Law, Custom and Social Order: the Colonial Experience in Malawi and Zambia (1985) 62

[3] The Federal Territory of Lagos and Southern Cameroons are here treated as separate regions. Southern Cameroons later seceded from Nigeria to join Eastern Cameroons in 1959. The Federal Government was the legislative authority for Lagos Capital Territory until 1967 when Lagos became a separate state

[4]

[5] Oluwole Agbede above n2, 9-10

the time being in force.[1] There is also a provision in the Evidence Act which precludes the enforcement of native law and custom contrary to public policy.[2]

It is correct to say that the colonisers used law to establish their rule and advance their interests; this is just one view of the experience. As Benton detailed:

Indigenous people demonstrated a remarkable awareness of the differences in norms and processes between the various coexisting legal systems and showed a strategic understanding of how to exploit their differences, invoking whichever system serves their particular purposes pitting one system against the other when the need arises.[3]

Challenge of Legal Pluralism in Nigeria

A legal pluralist analysis tends to emphasise the changes that occur through interactions between law and social life. The analysis opens up questions of resistance that builds on the theoretical traditions and rich ethnography of culture that challenges law in the very society.

It is probably in the field of family law that the state law have shown the least understanding and sympathy for customary norms. In most parts of Africa, because of the super-imposition of the laws of the colonial masters upon the existing customary laws and rules of common usage of the various people of the colonised states, several types of family exist.[4] Originally, the only marriage law known to Nigeria was the customary law marriage which varies from tribe to tribe. However, with the spread of Islam in the latter half of the 18th and 19th centuries, a second marriage law emerged.[5]

The Judges often show preference for marriages conducted under the Marriage Act. Thus Lush L.J referred to polygamous marriage (customary marriage is polygamous) as a union falsely called marriage.[6] This view emanates from the courts in England especially in the celebrated case of Warrander v. Warrander[7] where Lord Brougham said:

Marriage is one and the same thing substantially all the Christian World over, and it is important to observe that we regard it as a wholly different thing, a different status, from Turkish or other marriage among infidels.

Polygamy was viewed with disapproval or disgust in many European countries whereas in all African societies it was an economic necessity. Contrary to the European view, to be married to many wives in traditional African societies was to enjoy enhanced social status.

There are the main differences between the rights enjoyed under the received law, Islamic law and customary law. Again there are differences as between customary laws; in the same customary law, there are differences between patrilineal and matrilineal societies, and societies which allow dual descent. It is however; in the area of marriage that the observation of Benton quoted above is best depicted. The following cases best illustrates Benton's observation.

In Mariyamo v. Sadiku Ejo[8]

The case is an illustration of the complex nature of legal pluralism especially when it affects local custom. In this case it involved a custom whereby any child born within 10 months of a divorce was the property of the former husband of the child's mother. It seemed clear in this case that the former husband was not the father of the child. The court, therefore said that the rule was invalid with respect to the case.

The court held: we must not be understood to condemn this native law and custom in its general application. We appreciate that is basically sound and would in almost every case be fair and just in its results.[9]

The decision in this case goes to the issue of determining uncivilised nature of a custom. I argue that the court in holding the application of a custom as uncivilised standard must ascertain that the said custom has failed the repugnancy test; the decision in this case illustrates the failure to appreciate the possible results of application of custom

In Yusufu v. Okhia[10]

A widow refused to a relation of her deceased husband to 'inherit' her. She moved out of the matrimonial home and formed an association with the appellant without performing the funeral rites of her

[1] Supreme Court Ordinance Cap 211, Sec. 17 Laws of Nigeria 1948
[2] Evidence Act, Cap 62, Sec. 14(3) Laws of the Federation of Nigeria 2000
[3] Lauren Benton, 'Law and Colonial Culture: Legal Regimes in World History, 1400-1900 (2002) 134
[4] Jadesola Akande, 'Women and the Law' in Women in Law (ed) Akintunde O. Obilade Southern University Law Center and Faculty of Law University of Lagos (Lagos, 1993) 7
[5] Ibid 8
[6] Cheni v. Cheni (1962) 3 All E.R.873
[7] (1835) 2 CI.&F.488
[8] (1961) N.R.N.L.R 81
[9] ibid
[10] (1976) E.C.S.L.R. 274

deceased husband. The respondent, brother of the deceased husband, obtained judgement in the lower court against the appellant for adultery and enticement on the ground that the marriage between the deceased and the widow is subsisting until the wife performs the funeral rites for her late husband according to Ihievbe customary law. The court held: that a customary law that permits action for adultery and enticement after the death of a husband is repugnant to natural justice. It was the view of the Judge that enticement action was personal and dies with the person. He also took the view that the dissolution of the marriage could not be brought out by performance of 'funeral rites' but by the death of her husband, and that the widow's refusal to be inherited had terminated whatever remained of the marriage.

In Edet v. Essien[1], the appellant had paid dowry in respect of a woman when she was a child. Later, the respondent paid dowry in respect of the same woman to the woman's parents and took her as his wife. The appellant claimed custody of the children of the union on the grounds that under customary law, he was the husband of the woman, that the woman could not contract 'another legal marriage' until dowry paid by him was refunded to him and that he was entitled to any children borne by the woman until the dowry was refunded to him. The court held: that the alleged rule of customary law had not been established. It then said that even if such rule had been established it was of the opinion that the custom was repugnant to natural justice, equity and good conscience.

A close examination of the cases showed the cultural code for interpreting the world. However, their interpretation failed to persuade the court, even though Law is understood as a system of meanings and symbols. Geertz has argued for focus on structures of meanings, especially on the symbols and systems of symbols through which agency such structures are formed, communicated and imposed, in the comparative analysis of law as in the comparative analysis of myth, ritual, ideology, art, or classification.[2]

It is these line of cases that portray the challenges which bedevil legal pluralism; the purpose of legal pluralism is that which law and legal institutions are not subsumed under one system, but have their sources in self-regulatory activities which supports, complement, ignore or frustrate one another so that the law that is effective on the 'ground floor' of society is the result of complex and usually unpredictable patterns of competition, interaction, negotiation, isolationism and the like.

I cannot but agree with the above observation, as the cases examined either under the challenges of legal pluralism; conflicts of legal pluralism and the adaptation of legal pluralism in a global village mirror not only the complexity of the various laws but also the unpredictable nature of the legal field. I must add that in most decisions of the courts it is often customary law that is isolated and frustrated.

Conflicts of Legal Pluralism in Nigeria

Customary law, no doubt recognises certain kinds of contract such as sales and pledges of land, sales and bailment of goods, loan of money or articles, apprenticeship of various kinds, co-operative labour contract, contract of agreement, marriage contract and so on.[3]

It is often believed that legal pluralism presents no problem in the field of contract, as the court can always ascertain the proper law of the contract, unless there is a distinct law which supersedes in the determination of the legal system in which the judge is familiar.

The statutory provision enjoins the court to presume in favour of the application of customary law in civil cases involving natives (Nigerians). It should be noted that the 'natives' of Nigeria conducts their affairs primarily in accordance with customary practices before the advent of British rule. Transactions between citizens often show admixture of indigenous law and imported law; this tendency has resulted in conflict of law in deciding cases saddled with rules laid down under British courts when the people involved primarily led a traditional life.

The veracity of this law has been subject of litigation in Nigerian courts, I now turn to some of the cases in which the court had to decide the applicable laws.

Thus in Labinjo v. Abake[4] the question that needed to be determined is whether it is reasonable to presume the application of customary law in this situation.

A native girl of about eighteen years was sued by another native for trade debts. Her defence was based on the Infant's Relief Act 1874 (an English statute of general application) the effect of which would have made the claim of unenforceable against the infant. Both the trial judge and the divisional court assumed that the act applied. The full court held: that customary law ought to have been applied in the first place.

This case clearly depicts conflicts that arise when the courts have to make decisions within multiple legal systems.

[1] (1932) 11 N.L.R 47
[2] Clifford Geertz, Local Knowledge: Further Essays in Interpretative Anthropology (Basic Books, New York 1983)
[3] Oluwole Agbede, above n2, 103
[4] (1924) 5 N.L.R. 33

Agbede, in commenting on this case one wonders why the rules of native law should take precedence over rules of local statutes in causes and matters involving Nigerians.[1].

The veracity of the statutory law in which Labinjo v. Abake was decided was put to test in the case of Salau v. Aderibigbe[2] Charles J (as he then was) held: that in a case involving the question whether a hire purchase agreement in respect of a motor lorry was governed by customary law, warned that the rejection 'of a statutory provision as being redundant or inoperative however is only justified when all efforts failed to find a manifest object of the provision and to give intelligent meaning to the words in it, so as to achieve that object. The learned Judge interpreted the provision dealing with the exception, 'transactions unknown to customary as follows:

The words 'to claim the benefit of any customary law' with reference to transactions which appear by nature to be unknown to that law show, I think, that the object of the Legislature was to prevent the extension of existing rules of customary law in respect of familiar transactions by logic and analogy to transactions which are essentially different either because of their inherit novelty or the novelty of their subject matter.[3]

In Rotibi v. Savage[4], the court had to decide which mode of law applies to the transaction, the court held: that the use of writing did not necessarily indicate that the transaction was governed by English law. The court went on to state that with respect to the question of multiplicity of customary law rules applicable in a jurisdiction, obviously this is not relevant to the determination of the question whether the transaction is unknown to customary law. Acceptance by the local community is a feature of customary law.

According to Obilade, the crucial question to be answered in determining whether a transaction is unknown to customary law is not whether the subject matter or its type was known to the local community in the olden days but whether at any particular time in question there is an existing custom accepted as binding and governing dealings with the subject matter or with the type of subject matter.[5]

I cannot but agree with the observation of the learned jurist in the sense that legal pluralism affords the opportunity of pitting customary law against the received English law, on very many occasions customary law becomes a tool in the clog of justice.

I argue that in the decision reached in the various cases examined, the courts decisions may be right, in the light of the statutory provision. However, the absurdity of the law will be seen in the event of two legal practitioners entering into an executory contract, which by their conduct, cannot be said they intended to be bound by customary law, or in the event of a tortious act been committed. Tort liability cannot be said to be dealt with under customary law, herein lies the conflict that ensues within legal pluralism.

Adaptation of Legal Pluralism in a Global Village

Nigeria became an independent country within the Commonwealth on October 1, 1960; it took on a republican status on October 1, 1963. The country has had several constitutions namely: the Constitution of the Federal Republic of Nigeria 1960, 1963, 1979, 1989 and 1999 with several amendments; the constitution serves as the grundnorm of the society. However, besides the constitution, there are other laws in which the Nigeria state is signatory to, first as a dependent territory of Great Britain and second, International Conventions and Declarations entered into after becoming a sovereign state.

The current developments in information technology and communication are really astounding, over the last few years especially since the end of the 20th century, there have been explosion in the methods of communication. From the age of teleprinters, we have come to the age of radios, TVs, fax machines, computers and the internet. One notable feature of this innovation is the implication for legal development in all societies. However, I focus on the implication of legal pluralism in a global village in relation to the Nigerian state.

Legal pluralism definitely poses enormous problems because of the multiplicity of laws and the needs to not only accommodate those laws but also their implementation to prove to the comity of nations that the society is progressing along 'civilised' manner.

In this part, I intend to examine case law to show the adaptability of legal pluralism in Nigeria in the global village.

There is agreement across the board that Islamic law has been applied in Northern Nigeria. The rules of Islamic civil law, or in the language of the legal minds, Islamic personal law, have been applied in all the legal and other aspects of the Muslims in Nigeria. The rules on marriage, divorce, custody, entitlements, rights, obligations, transactions and dispute settlement have been governed and adjudicated applying the rules of Sharia. Indeed before the advent of British colonialists, official records of the Penal System in Northern Nigeria shows

[1] Oluwole Agbede above n2 112
[2] (1963) W.N.L.R. 80, 86 see also Akintunde O Obilade, The Nigerian Legal System (Spectrum Books Limited, Ibadan 1979) 152
[3] ibid
[4] (1944) 17 N.L.R. 77
[5] Akintunde O Obilade above n30, 154

that the rules of Islamic legal system was in application either by default or under the rubric of customary and native law.

This system operated somewhat effectively but with reported misuse and abuse of the penal and justice system as well as reported cases of oppression by the court and its officials. However, at the dawn of the 4th Republic some states in Northern Nigeria took steps to embody sharia law on their states, especially criminal laws, as laws regulating people's welfare as a result of a popular demand by people from their states. So through the use of democracy and the provisions of the constitution, these states introduced the application of Islamic criminal law. One of such states was Zamfara State where the governor signed two bills into law viz:

1) Sharia Court Law No.5 of 1999, which provides for the establishment Constitution, Composition and Jurisdiction of Sharia Courts and makes provisions for the administration of Islamic Criminal Law in the state.
2) Sharia Court of Appeal Law No.6 of 1999 which provides for the amendment of the Sharia Court of Appeal to confer and widen its jurisdiction; by the provsions of these laws Zamfara State seeks to:
   (a) Establish new court hierarchy of the court structures known to the Nigerian Legal System.
   (b) Confer additional jurisdiction to the Sharia Court of Appeal so that it is competent to determine appeals from the Sharia courts on all matters involving Islamic Law (including Islamic Criminal Law).
   (c) Introduce the Administration and enforcement of Islamic criminal justice.[1]

These innovation according to Zamfara State Government are in line with relevant constitutional problems, that is within the competence of a House of Assembly to establish courts in a state so long as it is subordinate to the High Court, and also that the State House of Assembly has similar powers to abolish any court it no longer desires S. 6(4) of the 1999 Constitution. He also argued that legislation on criminal matters was within the competence of both the Federal and State legislators since it fell under the concurrent legislative list set out in Part 11 of the second schedule to the 1999 constitution.

I certainly will not 'quarrel' with the assertion of sharia proponents, however, the implementation of the sharia code raises issues in legal pluralism beyond the shores of Nigeria, and in particular in relation to women's human rights.

In Safiya Tungar v Sokoto State[2] the fact is as follows:

On the 3/7/2001, the accused persons were arraigned before the upper sharia court Gwadabawa Sokoto State of Nigeria by the complainant on first information. Report alleging that on 23/12/2000 at about 2pm, the police got information that Safiyatu i.e. the second accused had illegal sexual intercourse with Yakubu Abubakar i.e. the first accused which resulted into unwanted pregnancy and later delivery of a child by the 2nd accused. Both accused had been married before. Thereafter the police arrested them and after investigations filed the complaint against them for the offence of Zina contrary to sections 128 and 129 of Sokoto Sharia Penal Code Law.

The court having examined the evidence before it held: that the prosecution had proved the case of Zina against Safiya, she had initially pleaded guilty to the charge. However, Yakubu was discharged and acquitted on want of evidence.

The decision of the Sharia Court generated furore within and outside Nigeria, this decision brought to fore the complexity of legal pluralism in a global world.

On appeal to the Sharia Court of Appeal, the charges were quashed albeit on technical grounds.

In Amina Lawal v Katsina State case[3] the facts of the case were similar to Safiya, only it occurred in Katsina. The accused persons were arraigned before the trial court in Bakori on an First Information Report (FIR) by the complainant alleging that Amina Lawal and Yahaya Muhammed, both residing at Kurami village were suspected of committing the offence of Zina the police arrested the accused persons on 14/1/2002 for committing the offence of Zina for a period of eleven months. The accused persons jointly committed Zina which is an offence, which resulted in the pregnancy and delivery of a child by Amina Lawal; this is an offence under the Katsina State Sharia Penal Code Law 2001. The prosecutor had witnesses to prove the allegation; the baby girl of 25days delivered by the first accused was tendered in evidence.

The trial court convicted the second accused on 20/03/02 upon the admission of the charge. The second accused was discharged for want of evidence.

This case also elicited strong condemnation both within and outside Nigeria. However, on appeal by Amina at the Sharia Court of Appeal, the charge was quashed.

---

[1] Abdulmumin B. Ahmed, 'Administration of Islamic Criminal Law and Justice in a Constitutional Democracy: Problems and Prospects 'in Sharia Implementation in Nigeria: Issues and Challenges on Women's Rights and Access to Justice (ed) Joy Ngozi Ezeilo (Women Aid Collective and Women Advocates Research & Documentation Centre Enugu & Lagos 2003) 167

[2] Unreported Judgement of the Sokoto State Sharia Court of Appeal dated 25/53/2002

[3] Unreported Judgement of the Sharia Court Bakori, Katsina State Case No.9/2002

The decisions in Safiya and Amina brought undue attention to Nigeria, the attention created necessitated the Nigerian state to prove its adherence to international norms and human rights principles. Ordinarily the decisions handed down to the two women was right in view of the provisions of Sharia and the evidence adduced against them; this thinking can however not hold because human rights norms and principles have become abiding guide in which all peoples must adhere to.

According to Fitzpatrick, custom supports law but law transforms the elements of custom and it appropriate its own image and likeness.[1]

The existence of legal pluralism itself is of less interest than the dynamics of change and transformation; in the two cases examined, the effect of the global village had a bearing on the overall decision of the appellate courts because of the Nigerian state. In a nutshell, legal pluralism leads to examination of the culture, ideology and nature of law in the society.

Conclusion

Legal pluralism has opened up questions on traditions and the efficacy of law in many societies, and Nigeria not being an exception. The question I tried to answer in this paper is how successful legal pluralism has been on the Nigerian state.

I argue that legal pluralism brings familiar conceptual problems back into focus and also raises some new ones. Legal pluralism is a creation of the colonialists in trying to 'civilise' the natives, but it hasn't worked in the way envisaged by those who designed the concept.

The cost of administration of justice becomes astronomical because of the need to create several courts instead of having a common court for all.

Legal pluralism presupposes a certain way of thinking about social space as seen in the division of co-existing compartments. The compartmentalisation in my view has compounded the function of law in society.

In summary, I submit that legal pluralism in Nigeria has not lived up to the expectations of the proponents, even though it has helped in solving some social problems, it is still an outsider in the Nigerian firmament.

[1] Peter Fitzpatrick, 'Law and Societies (1984) 22 Osgoode Law Journal 115

The IISTE is a pioneer in the Open-Access hosting service and academic event management. The aim of the firm is Accelerating Global Knowledge Sharing.

More information about the firm can be found on the homepage:
http://www.iiste.org

CALL FOR JOURNAL PAPERS

There are more than 30 peer-reviewed academic journals hosted under the hosting platform.

Prospective authors of journals can find the submission instruction on the following page: http://www.iiste.org/journals/ All the journals articles are available online to the readers all over the world without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. Paper version of the journals is also available upon request of readers and authors.

MORE RESOURCES

Book publication information: http://www.iiste.org/book/

Academic conference: http://www.iiste.org/conference/upcoming-conferences-call-for-paper/

IISTE Knowledge Sharing Partners

EBSCO, Index Copernicus, Ulrich's Periodicals Directory, JournalTOCS, PKP Open Archives Harvester, Bielefeld Academic Search Engine, Elektronische Zeitschriftenbibliothek EZB, Open J-Gate, OCLC WorldCat, Universe Digtial Library , NewJour, Google Scholar