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STATES OF NIGERIA

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THE INSTITUTION OF ŞULĤ AS AN ALTERNATIVE MECHANISM FOR DISPUTES AND CONFLICT RESOLUTION IN SOME OF THE SHARİ'ĀH STATES OF NIGERIA

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ABSTRACT

As long as people lives together, they might have their individual or collective interest, opinion, thought, taste and beliefs to defend or guard, and in the cause of protecting any, it may directly or indirectly lead to a dispute, conflict or misunderstanding among them. Almighty Allah has guided them with a revelation that will lead them to resolve their disputes and conflict through dialogue. (Q11:118). The effort of some of the Shari'ah States in the northern Nigeria to adopt a device mechanism for resolving conflict amicably through the use of Islamic sources attracted the paper. It is a qualitative research, primary data are sourced from the Qur'an, Sunnah, Ijma, Qiyas and the secondary sources of data include works written on the mechanism of conflict resolution in the modern times, papers presented at conferences, articles in learned journals and online printed material. Findings of the paper will be significance as Şulĥ, is the most easiest and effective means of resolving conflicts and it will recommend for other sharia'h states to adopt such a device mechanism for peace and lasting security.

KEY WORDS: Institution, Sulh, Alternative, Mechanism Disputes, Conflicts, Resolution, Shari'ah, Nigeria.

Introduction

Allah is the One who made human beings into different sex, nation, tribes, groups and people (Q30:22). Therefore, it is usual as long as people lives together, they might have their individual or collective interest, opinion, thought, taste and beliefs to defend or guard, and in the cause of protecting any, it may directly or indirectly lead

to a dispute, conflict or misunderstanding among them. Cohen argued that "there is no society which does not have a conflict" (Cohen in Emmanuel, 2012). Conflict is an inevitable aspect of human existence" (Zartman in Emmanuel, 2012) "Whenever people interact there is potential for conflict (Calhoun et al in Emmanuel (2012) When these unpleasant attitudes arose, Islam does not leave this

disgruntled state of conflict unchecked but pave way for its resolution through what is called *As-Sulh* i.e. amicable settlement. The Qur'an emphasized that humans are created by Almighty Allah yet they do differ in their views, ideas and interests, in order to bring them together Almighty Allah has guided them with a revelation that will lead them to resolve their disputes and conflict through dialogue. In this regard Allah says: "And if you Lord had willed, He verily would have made mankind one nation, yet they cease not differing, (Q11:118) Qur'an prescribes the path to the solution: O ye who believe! Obey Allah, and obey the messenger and those of you who are in authority; and if ye have a dispute concerning any matter, refer it to Allah and the messenger if ye are (in truth) believers in Allah and the Last Day. That is better and more seemly in the end. (Q4: 59)

Conflict is a divine means of testing the Iman

Conflict is a divine means of testing and growing the human being Allah says that when the conflict comes, Allah asks for *sabr* from people, and He is constantly watching how people behave in times of trial and tribulations. Therefore, it should always be remembered that God uses this conflict as a means of testing

people. It becomes obvious here that when one realizes that conflict is a test from his/her Creator, then he or she will do the best to handle the situation with care by taking the right steps to curb it. In this regards Islam recommend reconciliation amicably through (*Şulh*).

As- Şulh is an Arabic word literally means perfection especially if things become good, it means terminating a dispute. Ibn Arafah in Abdullahi (2014) It technically means abandonment or relinquishing of one's right or claim with a consideration for the purpose of terminating disputes or its avoidance altogether. The term *Şulh* has been used to refer both to the process of restorative justice and peacemaking, a method of resolving dispute amicably, Abdullahi (2014) .Allah advises Muslims that in case of dispute or conflict they should be fair and polite [in the treatment of the others]: The good deed and the evil deed are not alike. Repel the evil deed with one which is better, then lo! he, between whom and thee there was enmity (will become) as though he was a bosom friend. (Q41:34).

Islam through the teachings of *Qur'an* and *Sunnah* gave its stand on conflict and conflict resolution that Muslims cannot participate in conflict unless it is for the purpose of self-

defense or self preservation. The permission to engage in conflict is given to those people who are currently at the receiving end of the fighting and, in effect, are being wronged. The purpose is to preserve justice and prevent oppression from becoming widespread. Even at this point, it is better to resist and reconcile by other means, if there is an opportunity for that. (Q22:39-40).

Conflict Resolution in the Qur'an

Conflict Resolution in the Qur'an is referred to by the word *islah*. The definition of *islah* is to mend, to restore something that is broken, to make something right, to make peace, to set something in order. As Mohamed Sadek in (Flamur 2013) points out, the term:

appears several times in the Qur'an and which conveys the idea of improving, purifying, reconciling, repairing and reforming...The notion of islah implies bringing the object (whether a heart, an intelligence or a society) back to its original state, when the said object was considered to be pure and good: it is indeed a matter of improving, [or] curing, ...through reform. As long as people lives together in peace and

harmony sometimes they will encounter bitterness as conflict is an integral part of human lives, According to Toure, in (Flamur 102).

There are certain things that are certain to take place. Death is certain. Today you are ill, tomorrow you feel better. Today you are rich, tomorrow you are poor. Today there is conflict, tomorrow there is not. No matter who you are, this is true. This will always be true. From the time of Adam and Hauwa [Eve] this was true. This is what drove Adam and Hauwa out of their place [Paradise].

This incident brought Adam and Hauwa to the earth, according to the Qur'an And so We said: 'Down with you, [and be henceforth] enemies unto one another; and on earth you shall have your abode and your livelihood for a while!'" (Q2:36). After the exile of Adam and Eve to the world, Toure in (Flamur 2013) says that with Adam's children [Cain and Abel] there was conflict, referring to the first murder on earth initiated by Cain. Regarding this murder the Qur'an says, "then his [Cain's] evil soul... incited him to kill his brother [Abel] and he killed his brother and then he joined the losers" (Q5:30). This is very important to recognize here, says Toure in (Flamur 2013), because it shows that the desire to initiate conflict comes from inside, the *nafs* (the soul), and it becomes crucial that the person trains his or her *nafs* when it comes to handling conflict. (Flamur 2013),

The Development of the Concept *Ṣulḥ*

Ṣulḥ. or reconciliation and peacemaking, is a practice that predated Islam. Within the framework of tribal Arab society, chieftains, soothsayers and healers and influential noblemen played an indispensable role as arbiters in all disputes within the tribe or between rival tribes. Aseel (2016) . A notable

example here was when prophet was entrusted concerning the settling of *Hajar al-Aswad*. He asked for a mantle which he spread on the ground and placed the stone in its centre. He then asked the representatives of the different clans among them, to lift the stone all together. When it had reached the proper place, Muhammad laid it in the proper position with his own hands. This was how a very tense situation was eased and a grave danger averted by the wisdom of the Prophet, Al-Mubarakphuri (1996), similarly in its effort to avert bloodshed Islam welcomes reconciliation even if the terms would not favour Muslims. It was at six year of *Hijra* at the Hudaibiyya the Prophet (SAW) agreed to conclude a treaty of reconciliation and peace with the Quraish of Makkah Al-Mubarakphuri (1996)

The companions after the Prophet's (SAW) death maintained the culture of consultation for resolving their religious and legal issue, in accordance with Qur'an:

You who believe! Obey Allah and obey the Messenger (SAW) and those of you who are in authority, If you have dispute concerning any matter, refer it to Allah and His Messenger, if you (truly) believe in Allah and the last Day, This is better and and much more suitable for the end result. (Q: 4:59).

Umar bin Khattab instituted legal opinions of

the Prophet's companions as a tertiary source that could be consulted by later jurist Aseel (2016), meanwhile, in Flamur (2013), The agreement of Umar b. Khattab with the people of the surrendered Jerusalem in 638 C.E. is another example during the companions' era that Islam recognized any step taking to ensure peace is restore in society regardless of cultural and religious variations, the covenant reads as follows:

In the name of God, the Merciful, the Compassionate. This is the assurance of safety [aman] which the servant of God Umar, the Commander of the Faithful, has given to the people of Jerusalem. He has given them an assurance of safety for themselves, for their property, their churches, their crosses, the sick and the health of the city and for all rituals which belong to their religion. Their churches will not be inhabited by Muslims and will not be destroyed. Neither they, nor the land on which they stand, not their crosses, nor their property will be damaged. They will not be forcibly converted... Those of the people of Jerusalem who want to leave with the Byzantines, take their property and abandon their churches and crosses will be safe until [they] reach their place of refuge...and those who wish may return to their families...If they pay their taxes according to their obligations, then the conditions laid out in this letter are under the covenant of God, are the responsibility of His Prophet, of the caliphs and of the faithful.

Overview of African Conflicts

As regards to African conflicts (David Weeks in Adeleye , par.1). Stated, "Conflict is an inevitable outcome of human diversity and a world without conflict is not desirable, because it would mean a world without diversity." Africa is a diverse

continent – diverse in ethnic, religious and socio-cultural terms. According to Adeleye (*par. 2*) majority of its conflicts were internal, and these internal conflicts appear to be increasing, as elsewhere.

West Africa is not an exception it has now become one of the most politically dynamic and challenging sub-regions of the world. It has harbored in recent years some of the most horrendous threats of fratricidal conflicts in contemporary history. Liberia, Sierra Leone, Cote d'Ivoire and Guinea Bissau witnessed civil wars that have brought untold hardships to millions of people, and destruction of property and infrastructure. Richard (2006). Nigeria apart from Biafra experience, it in recent years engages in internal war with the Niger Delta Militants and insurgency from the North East.

In the Niger Delta region, conflict which arose in the early 1990s and up to 2009 over protest against environmental degradation and marginalization, led to the emergence of armed militia who adopted terrorist tactics to demand for environmental justice and development of the region. (Franscesca 2015). The Northern Nigeria has become a fertile ground for a number of radical Islamic sects that have

demonstrated their readiness to inflict violence to pursue their agenda. These sects use guns, bows and arrows to carry their attack. Such groups include the Muslims youth emerged in Kanamma of Yunusari local Government Known as Ahlus-sunnah Lidda'awwati wal-Jihad in Yobe State 2002, Boko Haram which means Western Education is sin which was founded in 2002 by Ustaz Mohammad Yusuf in Maiduguri and the group established branches in other northern states such as Bauchi, Yobe, Adamawa, Gombe, and Niger states (Franscesca 376-377). Until the onset of the *Boko Haram* crisis in 2009, the oil-rich Niger Delta region of Nigeria was the epicenter of violence in Nigeria since the 1990s. All efforts to stop the violent conflict proved abortive until 2009 when the federal government introduced an amnesty programme. Isaac (2015).

According to Dumap in Becky (2015) there are many factors that account for conflict in Nigeria. These include ethnicity, religious differences and their manipulation, land hunger and burgeoning population, chieftaincy disputes and the native-settler syndrome. A strategic conflict assessment of Nigeria (IPCR, 2003 in Becky 2015) with particular reference to the North-

Central focus largely around ethnic plurality, access to political and traditional positions of authority, land ownership and clash of herder-cultivator interest.

With all the afore mentioned disputes and conflict some of the twelve states in Northern Nigeria embarked upon implementing *Shari'ah* Law since the 1990s. (Amr 154) According to The New Radiance Magazine (2007), the states include: Bauchi, Borno, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe and Zamfara. The wind of change brought to light new challenges and opportunities. It highlighted the agenda and tasks before Muslims on integrating democratic governance into the *Shari'ah* process.

In their effort to ensure a sustainable effective implementation of *shari'ah* legal system these states established independent *Shari'ah* bodies, commissions, or Ministries and give them specific function to perform towards achieving a successful implementation of *Shari'ah*.

With this development some of the *sharia* states in Nigeria adopted a device mechanism for resolving conflict amicably through the use of Islamic sources, including the *Qur'an*, *Sunnah*, *Ijma*, *Qiyas* and other broad sources of Islamic law. Example Bauchi, Kano and Katsina states are the notable states that brought the Sulh

mechanism into existence. Therefore this paper highlighted the activities of Sulh in dispute and conflict resolution briefly in the two states.

Sulh in Bauchi State

In Bauchi State the institution of *Zauren Sulh* for conflict resolution under state *Shari'a* commission at both state, local government and community levels was established and formally inaugurated on 6th September, 2001 by the then Executive Governor of Bauchi state Alhaji (Dr), Ahmadu Adamu Muazu (Dahiru 52), under the Bauchi State *Shari'ah* commission law of section 3 sub-section 3/1 of June, 2001, the commission has four major Departments namely: The *Zakah* and Endowment, *Shari'ah* and Enlightenment, Law and Enforcement and the Department of Administration which is regarded as the nerve centre of the commission. The commission like other government's parastatals or establishments, each of the department has specific function to perform towards achieving a successful implementation of *Shari'ah* throughout the state. (The Bauchi state *Shari'ah* commission 1)

The (*Hisbah*) law and enforcement department is a department saddles with the responsibility of ensuring the law and order is strictly observed and to its logical conclusion. The department has two sub-units, the *Hisbah* Command and the *Hisbah* Coordination, each is headed by a director *Hisbah*. The coordination deals with all matters that are related to reconciliation (Sulh) (The Bauchi state *Shari'ah* commission 1)

The coordination unit had formally taken off

reconciliation exercise with effect from the year 2002. (Dahiru 53) that was one year after the establishment of the commission, the *Sulhu* unit since then remains up and doing in the settlement of different cases. A total of 598 cases were received in the year 2003 and 2004, out of which 450 have been settled amicably and the rest were referred to courts. More similar cases were received and settled in the year 2005. (Bununu).

The reconciliation (*Şulh*) committee at the state headquarters scheduled its works in such a way that days and times are set aside for specific cases to avoid conflict with other issues. Most cases decided by the *Zauren Şulh* are related to family issues, business transaction, crimes, inheritance and most people of the state prefer taking their cases to *Zauren Şulh* at the commission than taking them to police or courts. The achievement recorded by the unit within short time led to the expansion of the said unit at the local government and ward levels. (The Bauchi state *Shari'ah* Commission 2). Unlike the state unit of *Zauren Şulh* which operates at the *Shari'ah* Commission's premises, the local government chapters too operates at the local government secretariat on working days only, but that of the Community/Ward chapters operate any day and any time when the need arises presently there are 104 registered Units from 19 local governments of the state. (Bununu).

***Şulh* in Katsina State**

In its effort to implement Islamic legal System,

the Katsina state renamed its Area courts to Sharia courts with original jurisdiction to try cases involving Muslim or Persons subject to Islamic law, the law that establishes the Sharia courts is the Sharia courts law. 2000.

The Sharia courts are empowered to hear and to determine both civil and criminal cases in the state, the Islamic penal system over criminal cases coming before the Sharia courts in Katsina state, Abdullahi (2014), while the Islamic law relating to the Institution of *Şulh* is also discussed, referring to their works in the enabling laws of the Katsina state Sharia courts is quite relevant Nurudeen in Abdullahi (2014).

According to Gambo in Abdullahi (2014), that the stand of Sharia courts in respect of amicable settlement of disputes and their litigants are at liberty to have their disputes referred by the courts to professional arbitrators as an out of courts settlement, to which arbitration is also a process well established under Islamic law and is one of the mechanism for attainment of *Sulhu*, Ibrahim in Abdullahi (2014) clarified that as regards to *Sulh* in Katsina state, the court will advice the litigants to explore Alternative Dispute Resolution (ADR) procedure to settle their disputes, on the other hand, it can also be at the instance of parties themselves where they agree to refer their disputes to the Multi-Door Courts House for the resolution of disputes.

The *Şulhu* Door of the Katsina state, as Multi Door Court House (KTMDCH) was introduced in the year 2011 and it was one of its doors within the Katsina state Judiciary designed to facilitate alternative disputes resolution (ADR) in the state,

the *Şulhu* Door is locally designed for the Katsina in consideration of the peculiar values, practice, customs and beliefs of the people within the state, primarily it aims at capturing certain cases that clog the litigation process and are subjected to great delays while by their very nature are amenable to amicable settlement, Abdullahi (2014).

According Abdullahi (2014), the nature of cases of *Şulhu* Door of Katsina State include: Inheritance matters, maintenance matters, custody of child cases and other matrimonial disputes. They also, include various types of contract, land matters, criminal cases capitally offences. Meanwhile, the policy of *Şulhu* Door (2011) of Katsina state empowered *Qadis* too to perform the roles of mediators and conciliators as part of their judiciary responsibilities.

Şulhu mechanism in Katsin S tate have help in speed up the trial and help in decongestion of cases in Sharia courts.

Benefits of *Şulhu* to Muslims

- a) All cases are treated according the Islamic recommended sources, e.g. *Qur'ān, Sunnah, Ijma, Qiyas* etc.
- b) Most of the cases were resolved amicably.
- c) Cases were freely received, registered and treated free of charge. Except if the matter involved taking an invitation letter(s) to the defendant, in this case the complainer will provide transportation.

- d) The *Şulhu* proceedings involved the roles of community leaders, religious leaders, volunteers, staff of *Shari'ah* Commisions, sometimes lawyers and judges.
- e) The quest for loyalty and the reputation of religious leaders and traditional rulers help in drawing litigants closer to the negotiation table to discuss their problems and eventually reach a settlement, (Abdullahi, 2014)
- f) In matrimonial related cases, matters are approached in such away it will not lead to divorce except if circumstances beyond control or critical.
- g) Sulhu gives speedy trial of cases without taking long time or process, because the mediators are committed to assignments.
- h) Where the litigants failed to reach conclusion, the cases referred to the court for further deliberation.
- i) The activity of *Şulhu* process decongested cases in courts, police station and relief them on many situations.
- j) It involves many stake holders to put more hands in peace process and peacemaking.
- k) Either of parties involved may choose to exercise the liberty of it to *Şulhu* Door for out-of court settlement. For

attainment of benefits of *Şulhu*, a party is also of such a free will to respond to an invitation for a *Şulhu* session and to facilitate its resolution amicably (Abdullahi, 2014).

Conclusion

The Institution of *Şulhu* has a long history, infect, the application of the concept in resolving tribal disputes and pre-dated Islam, and Islam see it a workable device for peace making, the objective of *Şulhu* is to ensure the long lasting peace through mutual understanding, respect for each other and forgives, there is a reward from Allah if the reconciliation in made in an independent and impartial manner with an aim to attained agreement amicably.

Şulhu is an integral part of Islamic law the parties involved had surrender their original stand to avoid hostilities, the parties had to bear in mind that they will not usually get what they intend to get.

Recommendations

1. That the states practicing Sharia law should recognised *Şulhu* as an amicable dispute and conflict resolution in their Sharia courts and outside courts proceedings.
2. Other Sharia states should co-opted the process of *Şulhu* and provide a white paper as formally done in the case of Bauchi state government; this will

instantly get the support of people.

3. The Bauchi state government extended the activities of the concept to local government headquarters, villages, ward and community levels, other states should do the same, instead of restricting it at the state chapter.
4. The Sharia Commission staff, Religious leaders, Judges and volunteers should take the activities *Şulhu* as part of their commitments to contribute to the societal development voluntarily.

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