



Nigeria's Stability: Constitutional Reform and Beyond

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Given Nigeria's central role in West African politics and economics, it is arguably 'too big to fail'. In this regard the key challenge is to assist the country to perform a stabilising role in the region as well as in the rest of Africa.

In recent months, international and African media headlines have often depicted Nigeria as being on the verge of collapse, implosion and civil war. Striking and often simplistic reports have emphasised terrorist threats in the North, drawn links between terrorist attacks by Boko Haram and AQIM in the Sahel and explained human security challenges in the country on the basis of interreligious and regional rivalries.

The briefing held by the Observatoire de l'Afrique aimed at discussing field-informed analyses of the threats to Nigeria's stability, in a context of the ongoing constitutional review process. More specifically, experts dealt with the following research questions:

- What are the root causes of human insecurity in Northern Nigeria and how should state level security and development challenges be understood?
- What are the challenges for an effective constitutional reform agenda?
- Is there a way to rethink an effective revenue sharing formula and the structure of fiscal federalism?
- What are the implications of the above and the potential for engagement for external actors including the EU?

The root causes of human insecurity in Northern Nigeria and the challenges of state level security

The historical roots of the Nigerian state's national security philosophy emphasises national unity and the protection of government, arguably without adequate attention to human safety and security. As a consequence, any criticism against the government is understood as an attempt to undermine national security.

This assumption has its roots in the colonial era and continues to inform contemporary national security policies. It stands in contrast to a citizen-based national security policy and prevents the establishment of an effective system addressing human security and safety. In a country marked by a very high level of poverty and illiteracy (72%, i.e. around 100 million people, are believed to live below the poverty line) this security-centred political discourse is not aligned with people's daily survival concerns.

The political and security elite in Nigeria have fostered doubts regarding democracy amongst the people, despite electoral processes, by sticking to a security-centred governance style. Democracy has not been translated into any meaningful improvement in the quality of life. Successive governments have plundered resources and seldom paid attention to the needs of the people. Government is arguably haemorrhaging credibility, resulting in a serious trust deficit. Participants unanimously saw this phenomenon of "bad governance" as the root political cause for current human insecurity in the country.

In addition to, or as a consequence of, this widespread behaviour of the political elite, security governance is characterised by police inefficiency: reactive policing prevails over pro-active and effective crime prevention.

The 1999 Nigerian constitution was promulgated to match the interests of the military and entrench powers within the political centre of the county. This process started in the aftermath of the civil war (1967-70) and the rationale was to cement the country's unity.

As a result, police, customs, immigration, border security, military, civil security corps are all under the authority of the federal government and the states only have limited control over their security forces. Practice shows that the police usually rely upon the federal level for guidance, despite section 215 (4) of the 1999 Constitution¹. Such centralised police behaviour has led states to call for the establishment of state police forces more directly controlled by governors.

One of key challenges for the future of security governance, according to some experts, is to find ways to take security powers away from the centre and to give it back to the states. A potential dilemma exists of the risk of powerful state governments challenging the very federal nature of the current system, and therefore threatening national unity.

This is even more apparent when examining the degree of accountability and probity of state governments. As one expert put it, governors "are not mature enough to ensure a right balance. If you give them the police, they would mess it

up even more." Moreover, it was underlined that when the opposition is in power at the state level, the president constantly undermines the state police for political reasons.

Recent trends are worrisome: the high number of extra judicial killings raises the issues of accountability of policing and counter terrorism. In the North, the joint security task force has been implicated in a number of killings and some speakers highlighted the need to investigate this thoroughly.

Nigeria's security and governance crisis only partly explains human insecurity in the North. Boko Haram (BH) in particular is a complex multidimensional phenomenon, which has so far been loosely grasped by international and national media. It is a phenomenon that has so far defied analysis.

Until a violent repression in 2009, Boko Haram was a movement that had not utilised the radically violent methods (suicide bombing, terrorist attacks, the targeting of Christians and expatriates) that it has used in the last 3 years. One way to explain BH radicalisation is to argue that the government's harsh repression in 2009, including the killing of BH leader Mohammed Yusuf and attacks against Quranic students, led the group's 'hawks' to prevail over its 'doves'. "In more than one case out of two, repression adds more violence to violence because of the violence of repression" commented one of the speakers.

According to some experts, violence may also result from inefficiency within the security forces due to political interference from the highest level. The military and the police have largely failed to prevent violent attacks in the North, mostly due to a lack of credible intelligence gathering even when in possession of precise information

¹ "Subject to the provisions of this section, the Governor of a state or such Commissioner of the Government state as he may authorise in that behalf, may give to the Commissioner of Police of that state such lawful directions with respect to the maintenance and securing of public safety and public order within the state as he may consider necessary, and the Commissioner of Police shall comply with those directions or cause them to be complied with. Provided that before carrying out any such directions under the foregoing provisions of this subsection the Commissioner of Police may request that the matter be referred to the President or such minister of the Government of the Federation as may be authorised in that behalf by the President for his direction."

regarding upcoming attacks, as occurred in Kano in January 2012.

Brute military engagement also escalated violence, contributing to a growing feeling of occupation amongst concerned communities in Borno, who feel targeted by the military. Some sort of support - albeit non-ideological - for BH, has arguably appeared, for instance at times when people refuse to give intelligence to security forces².

The second explanatory factor for the BH phenomenon is socio-economic in nature. It is linked to poverty, unemployment, and disenfranchisement of the youth, corruption, and class struggles. According to some speakers, there is a criminal element to Boko Haram, whereby people rob banks as Boko Haram, but are subsequently treated as a terrorist case instead of robbery. However, because there are other poor states - and even poorer than Borno - where violence is not taking place, this explanation is not sufficient in itself.

The third factor is political and related to the power interests of those benefiting from, or who become strengthened by, instability. The manipulation of armed groups by political leaders is not new in Nigeria.

The fourth factor is religion, despite its presentation in the media as the main factor. At its beginning BH was a Sharia law-oriented sect, behind which one could read a demand for social justice against the corrupt Muslim elite (and the governor of Borno, Ali Modu Sheriff, in particular).

In the last few years, Boko Haram has tried to "trigger a religious war". Some

analysts consider it will not succeed because of Nigeria's multi-religious features, where people practice various religions within one family. But such religious diversity exists only in some parts of the country (for instance with the "Yoruba mix"). While religion is increasingly becoming a tool in politics, the speakers had doubts about religious groups becoming well armed and initiating conflict with each other on religious grounds.

There is a real danger, with international news coverage focusing exclusively on interreligious violence, that misleading narratives are encouraged. It was acknowledged during the debate that ongoing violence between Christians and between Muslims receives little press coverage.

One speaker flagged out another avoidable mistake: the application of the 'domino theory' in the Sahel region, whereby violence in Northern Mali spills-over into Northern Nigeria. For this speaker, there is insufficient evidence to argue for connections between Al Qaeda Islamic Maghreb (AQIM) and BH. If Nigerians have been fighting in Northern Mali, it is unclear whether BH sent them. Furthermore, the nationalistic dynamics of Azawad and Tuareg movements should be cautiously examined to avoid making careless linkages.

Boko means three things in Hausa: book, sorcery and trick. These three versions of the word could explain that BH rejected the "bad book", but not necessarily modernity as a whole, contrary to other Islamic insurgencies in Kano in the 1980s. It also means that it rejected corruption, and political deception.

BH is a combination of diverse and heterogeneous religious, political, or security-related phenomena involving moderates and radicals. However, according to some experts, the

² In the last weeks, during the BH attacks in Kaduna and Yobe states and the subsequent arrest of a large number of suspected BH militants, the joint task force (JTF) thanked the people for sharing vital information with the army and the police.

government is unable to make this distinction. Beyond security, problems have to be addressed at political, financial and social level, instead of merely militarily.

Human insecurity and politics

Participants briefly discussed human insecurity in other parts of the country, namely the Middle Belt and Jos, and the Niger Delta.

It was noted that violence in Jos is often depicted as interreligious while armed groups are often politically manipulated.

Middle Belt communities frequently refer to the “political North”, which reflects a perception that Northern Hausa Fulani groups, who are mainly Muslims, are attempting to establish their dominance over others, a perception that dates back to the era of British colonialism.

In Jos, where both Christian and Muslim communities have suffered numerous casualties, speakers discussed the possibility that religious symbols are used to hide class and political conflicts. Political conflicts have therefore been depicted as religious.

It was also underlined that President Goodluck Jonathan was elected with many Northerners’ votes, arguably derived from the assumption that he was best suited to resolve the Niger Delta crisis. For experts, it is therefore nonsensical to talk about Nigeria’s “South-based president”.

The difference between the reality of political practice and people’s expectations is arguably based on the so-called “zoning system”, according to which the six regions (South-south, South-east, North-central, North-west, North-east and South West) provide a turnover of presidents to the country. This

unwritten agreement is now being challenged.

Former President Olusegun Obasanjo was elected to a second term in office, whilst Former President Yar’Adua did not finish his, and President Goodluck Jonathan did not let the North serve out Yar’Adua’s :

The idea that each region should have a president governing for 8 years each was also raised. Against this background, on-going violence in the North could also be understood as a political response to President Jonathan’s violation of the zoning agreement. However, the President would not have been elected without the active support of several northern governors and key northern political leaders.

Civil society mobilisation and development challenges

There was a consensus amongst experts regarding the impact of corruption and its depiction as the one unifying factor of the political elite. The persistence of unqualified immunity for governors and the President under section 308 of the 1999 Constitution is seen as the main hurdle preventing development-oriented governance. In the North, Sharia law potentially gives people an alternative form of social justice when the youth witness political elite corruption.

President Jonathan has in the past been publically perceived as a weak leader in the fight against corruption, and this could be explained by the fact that corrupt businessmen, ranking PDP members and PDP governors allegedly supported his campaign.

While the Nigerian constitution states that the government should work to eradicate illiteracy, its education policies have not fulfilled the basic needs of the population for student grants and access

to education. This is true for most of public policies that would benefit from more clearly “socially-sensitive advisers in the Presidential cabinet”, stated one speaker.

As for oil policies, no real progress has been made regarding the long pending petroleum bill (PIB) and the necessary reform –and/or unbundling of the Nigerian National Petroleum Corporation (NNPC) at the centre of the country’s socio-economic governance, thereby fuelling even more anger. The absence of any monitoring of oil prices was criticised by some experts, who regretted that greedy political forces were pushing prices upwards “using venality within NNPC”. The House of Representatives’ report on the oil subsidy was described by one analyst as “far reaching”, clearly stating that around 7bn USD were stolen; Whilst better management and stronger oversight by the General Attorney and the Presidency of the national assembly was recommended, these issues seem to have disappeared from public debates.

On an optimistic note, it was also stressed that the recent directives from the Minister of Justice to move forward on indictment cases was an indication of progress in the fight against corruption.

Social frustration regarding resource mismanagement and the lack of transparency was manifested during the oil subsidy crisis, with one speaker commenting, “Nigerians were analysing the budget in the street”.

For some participants, the fact that the government stepped back from confronting the protests signified a growing democratic maturity in Nigeria’s political system. For others, it simply indicates that the elite understood there was a real threat of regime change and they needed to adjust in order to prevent a deeper political crisis. Some speakers argued that these events also signified the

existence of a serious risk for a revolutionary movement in Nigeria.

Other experts argued that the conditions for a ‘Nigerian Spring’ were not met as the President is new, young and still inspires hope, contrary to older African leaders such as Col. Gaddafi, who had been in power for several decades. Angry youth from various regions are not united behind a common national vision, ambition or strategy, and do not believe that armed struggle is the only means of transcending a political impasse.

Furthermore, despite its large scale, the impact and nature of the social and political mobilisation around the removal of the oil subsidy initiated a debate amongst experts. Some saw it as “unprecedented”, whilst others argued that civil society was not necessarily any better mobilised than it had been during the strikes of 1994, but rather it was better organised. It was also recalled how civil society has often been very vibrant, due to its size, accompanied by an often insolent and courageous press and is better developed than in many French speaking and other English speaking countries.

Challenges at country level

The Nigerian constitutional review process takes place in a rapidly evolving and rather unstable environment marked by deeply rooted practices of corruption and socio-economic inequalities, politically manipulated and poverty-induced human insecurity, and tensions between states and a rather weak centre. A stabilised environment requires new policies and perhaps constitutional amendments. However, if they do not address the needs of the people; these would not be able to improve the situation.

There was a consensus on the need to intensify the war on corruption and to

work for the removal of immunity. The second challenge relates to Security and Justice Sector reform in order to improve the efficiency and accountability of security forces. The third challenge relates to the reform of citizenship and indigeneity, which would perhaps require constitutional amendments *per se*.

The challenges for an effective constitutional reform agenda

Objectives and priorities for the constitutional reform agenda

In November 2011, President Jonathan announced the inauguration of the “Presidential Committee on the Review of Outstanding Constitutional Issues. The National Political Reform Conference of 2006 provided the basis for constitutional amendments. The President also announced his willingness to further strengthen areas of national consensus and renew the 1999 Nigerian Constitution. The core issues at stake included “National Security, Human Rights and Social Security, People’s Charter and Social Obligations; Environment and Natural Resources, Models and Structure of Government, Public Service, Power Sharing, Local Government Reforms and the Economy”.

The scope of the constitutional review process is so broad that experts have serious doubts about its added value. Some priorities were however sketched out during the briefing. According to experts, the essence of the constitutional reform should certainly not be to break up Nigeria but to open up the political and public space.

For some experts, the constitutional reform process should not only be about changing laws, but should be about triggering discussion on the philosophy of governance and national security which protects fundamental rights and provides

democracy’s dividends to citizens. Indeed, the current constitutional order was arguably created to favour the military. In addition, many civilians who benefited from this regime became governors or members of parliament after 1999. They are also called “apologists of military rule”, protected by their immunity. Constitutional changes should therefore be seen as a way to encourage this ruling group to implement reforms consisting of revising power sharing between the federal and state levels.

One of the priorities for the constitutional reform agenda should be the removal of immunity for elected officials. This, according to some speakers, could be called for domestically through political pressure and encouraged by the international community.

A second priority relates to the excessively close links between the electoral commission and the executive, preventing genuine progress and movement towards freer and fairer elections.

The third priority to be considered has to do with citizenship and indigeneity. In some areas like Jos, social practice has negated residence rights, in contradiction with the constitution (Article 147 (3), *inter alia*). More broadly, and for well-known reasons linked to the history of state creation in Nigeria, indigeneity tends to prevail over residence and citizenship and contradicts the spirit of current constitutional frameworks. For some analysts, constitutional reforms should be used to “rethink rigorously the principles of citizenship, residence and indigeneity”. For instance, residency rights would need to be redefined and above all clarified in a new constitution. There is also a need to better define indigeneity to avoid current discrepancies among and between states. States’ representatives could also be involved in such endeavours.

Based on the above, a fourth area for constitutional reform would be competence sharing in policing between the federal and the state levels.

The constitutional reform process will have to address the need to have a police system addressing the particular needs of each state whilst maintaining the unity of the country. It was also suggested that other countries' federal and state police models (Canada, the US) be examined in order to assess which ones could inspire reforms in Nigeria.

Limits of the constitutional reform

Firstly, progress greatly depends upon the format within which decisions on constitutional changes will be decided. The establishment of a national sovereign conference (as is being currently discussed) might reproduce current political flaws already at work within government institutions. All speakers agreed that such a conference is not necessarily the way to go for constitutional reform, especially if it works on the basis of majority voting. Some suggested that, as demonstrated by electoral reform successes, constitutional change would require persistent and enduring civil society engagement to properly reflect and translate the demands of citizens into constitutional work.

Secondly, constitutional review efforts risk failure in reconciling two opposing principles of the current revenue sharing system. The first principle is federal in nature and would be based upon revenues transfers and compensations from rich regions to poor ones, as is currently the case. In this option, the oil-rich South subsidises the North. The second principle relies on the concept of decentralisation (largely in place at independence) providing fiscal autonomy to sub-national political entities. As a matter of fact, the majority of states

would probably opt for the maintenance of the current system. Other solutions would be of a consociationalist nature but have their own limitations and may not fit Nigeria's realities.

Moreover, compensation policies are ensured by a limited number of "rich" states (mainly from the South), with a majority of "poorer" states benefiting from it. Changing this system, even if most of Southern states wish so, would require the agreement of a majority of states that currently benefit.

Thirdly, greater decentralisation may seem rational in theory but could lead to a worsening of corruption. The current Nigerian system is built upon three tiers (federal, states, local) of governments, in addition to districts in certain cities. As bluntly put by some experts, the degree of corruption at the local level is massive and this is to be taken into consideration when attempting to increase powers and resources at local and states levels.

Constitutional changes cannot replace better governance practices

In short, any constitutional reform appears senseless if it is not accompanied by serious change in governance practice. According to the speakers, if corruption is not directly tackled, power shifts from the centre to the regions, states and local governments and will only lead to a shift of corruption practices within these governance levels. The only way to ensure efficient decentralisation thus seems to consist of the establishment of solid oversight mechanisms at all governance levels, with the involvement of civil society.

The effective revenue sharing formula and the structure of fiscal federalism

The current revenue sharing formula consists of allocating the biggest bulk of

national resources to those governance levels that enjoy most power. So far, the federal level has the lion's share of legislative powers (68 items in the exclusive list against 30 for the states items in the concurrent list) and, despite its weaknesses, receives most of national revenue.

In case there is a constitutional amendment of the current revenue sharing formula, some speakers argued that it should adopt a mechanism for better accountability to ensure an effective fiscal system. It could be envisaged that the federal government pass a Fiscal Responsibility Act, and a procurement act involving the states, with strong oversight mechanisms. It was argued that such a reform could proceed in parallel with immunity removal.

The main challenge for the President at this stage is that given his commitment to proceed with constitutional reform, he also has to satisfy demands from Niger Delta militants asking for more resources, while simultaneously guaranteeing a sufficient transfer of oil revenues to the North. The state governors appear set to follow their earlier victory in the battle to remove the fuel subsidy by wining the battle to have a new national revenue sharing formula that would give more resources to the states and local councils, but could yet lose the battle to accrue more powers. One way of channelling more resources to the delta communities involves using alternative options, such as the amnesty programmes, without officially changing the existing federal character. But it remains to be seen whether this kind of practice will be acceptable both to the militants and the North.

Implications for engagement by external actors including the EU

In the short term, the international community could help Nigeria in the field

of intelligence gathering to enhance the capacity of its security forces to act in a more preventive manner, and not simply adopt reactive and containing strategies. This could, for instance, take the shape of deepened dialogue on Security and Justice Sector reform experiences from other parts of the world.

International powers are also advised to emphasise, in their political dialogue with Nigeria, the value of non-military methods to fight terrorism, for instance development-focused policies, job creation and access to education.

Similarly, outsiders could suggest Nigerian authorities fine tune their counter terrorism methods by listening to BH Sharia-oriented and Northern communities' socio-economic demands.

The EU in particular could do more to support civil society in amplifying civic messages and alternative credible voices in constitutional reform debates, in order to effectively tackle corruption and impunity.

On the EU side, options for preventing capital flight originating from Nigeria could start being considered, as well as revising laws that currently make it easy for corrupt Nigerians, as well as other African leaders, to deposit illicit wealth in western banking vaults. This would help broaden constitutional discussions and guide governments in linking reform with long-term governance improvements.

Finally, the international community could do more to engage the National Assembly and the stakeholders of constitutional reform to bring solutions to indigeneity-related problems.