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THE EFFECTS OF THE BRITISH COLONIAL COURT SYSTEM ON THE NIGERIAN JUDICIARY: THE BADE NATIVE COURT EXAMPLE, 1906-1945

Fidelis, Imeje Ebri

Department of History & International Studies, Federal University, Gashua, P.M.B. 1005
Gashua Nguru Road, Yobe State, Nigeria

Email: illeyfidel@yahoo.com,

Ibrahim, Aisha Ningi

Department of History & International Studies, Federal University, Gashua, P.M.B. 1005
Gashua Nguru Road, Yobe State, Nigeria

Email: aishatuindo@gmail.com

&

Dankullu, Mukhtar Habibu

Department of History & International Studies, Federal University, Gashua, P.M.B. 1005
Gashua Nguru Road, Yobe State, Nigeria

Email: mukhtarhd2007@gmail.com

Abstract

This paper examine the root causes of the plethora of challenges currently plaguing the Nigerian judicial system. This became necessary as a result of the incessant threats to the independence of the judiciary as an independent organ of government. The paper will assist legal professionals and stakeholders in their quest to proffer lasting solutions to these undesirable malaises inflicted on the Nigerian judicial system. The researchers used the historical method and combined extensive library and archival research with information collected from knowledgeable informants to trace the root causes of the sharp practices that have compromised the credibility of the Nigerian judiciary. Using the Bade Native Court as a case study, the paper found that the decadence in the Nigerian legal sector could be traced to the colonial court system. It therefore recommends a complete overhaul of the Nigerian legal system with the aim of removing alien practices that are not compatible with indigenous traditions and/or cultures of Nigeria.

Keywords: British Colonialism, Borno Province, Bade District, Native Court, Nigerian Judiciary, Courts of Law

Introduction

Before the imposition of British colonial rule on the various ethno-linguistic groups of the Nigerian area, the primary responsibility of the indigenous judicature had been to dispense justice following established laws of the land. Such established laws emanated from the indigenous cultures, traditions and/or belief systems of the people. However, after the attainment of political independence from Great Britain on 1st October, 1960, the capacities of law courts in Nigeria to credibly discharge their constitutional duties have continued to suffer major setbacks. These setbacks have placed the independence of the Nigerian judiciary in a near-compromised position. It is against this backdrop that this research was conducted to uncover the root causes of the plethora of challenges presently faced by the Nigerian judiciary. Understanding the subtle connection between the British colonial court system and the Nigerian judiciary is a necessity to help fast-track the reformation processes of the Nigerian legal system. To sustain the ethos of

democracy and ensure transparency in governance, there is every need to restore the trust and confidence of Nigerians in the ability of the law courts to credibly dispense justice without any form of interference or biases.

This paper examines the impact of the colonial court system on the Nigerian judiciary. It aims to uncover the salient features of the British colonial court system and its effects on the Nigerian Judiciary. It also assesses the roles of colonial officials in institutionalizing sharp practices in the colonial courts of law.

The paper consists of ten sections. The sections are Abstract, Introduction, Methodology and Sources, Location of the Area of Study, History of Bade Polity, British Colonisation and Reactions, Colonial Court System in Bade District, Effects of the Colonial Court System on the Nigerian Judiciary, Conclusion and Recommendation.

Methodology and Sources

The researchers used the historical method combining extensive library and archival research with information collected from knowledgeable informants from Nigeria. The oral information obtained from informants was primarily meant to supplement those derived from archival records and books. The corroboration of information obtained from published articles and books, unpublished theses and manuscripts, diaries, reports, and oral interviews of knowledgeable informants helped the researchers to ascertain the authenticity and reliability of the sources consulted

Regarding the sources, the researchers utilized published books and articles, unpublished PhD thesis, General Reports, Assessment Reports, special reports, oral history, and newspapers. These sources were located and assessed at different higher education institutions, heritage institutions and repositories including the National Archive, Kaduna; AREWA House, Kaduna; Bade Emirate Palace, Gashua; Bade Local Government Council, Gashua; Jakusko Local Government Council; History Department, Yobe State University, Damaturu; and History Department, University of Maiduguri.

Location of Bade District

Bade District covered an area of about 1,844 square miles (4775 square kilometres). It was situated in the west of Bornu Province and located approximately between latitude 12°0'N and 12°52'N, and longitude 10°30'E and 11°13'E¹. Its southern boundary with Fika and Allagerno districts was bisected by the Komadugu Gana River; to the west it was bordered by Komadugu and Hadejia emirates of Kano Province; to the north by the Nguru and Gashua districts; and to the east by the Borsari district of Bornu Province². From north to south, its greatest length was 60 miles and measured 40 miles from east to west in breadth³.

A Brief History of the Bade Area

The term Bade (Bedde) describes a socio-linguistic group, as well as a political entity. The History of Bade could be traced to 1400 A.D. when the first wave of Bade migrants (of the Muguram stock) migrated westward from Dadigar and founded Tagali⁴. These Bade migrants became known as the Tagali Bade group. Other Bade Migrants soon followed suit, and as a result, organised themselves into semi-autonomous Bade Chiefdoms along the rivers Komadugu, Katagum, and Hadejia. The Gidgid group (first Bade migrants to Gidgid) soon emerged as the dominant Bade group and took over from the Tagali group as the leading Bade group. Subsequently, the political and administrative system of the Bade area was gradually centralized under the Gidgid rulers. A centralized political and administrative system of government evolved from 1842, although some Bade and Ngizim polities were still independent of the central government at Gorgaram. This was the political situation in the Bade area when the British forces

occupied Gorgaram in 1904.

British Colonisation and Reactions

In 1904 a detachment of the British colonial army entered and occupied Gorgaram. Mai Saleh ibn Aji knew about the approach of a British force further west of Gorgaram⁵. The colonial army entered Gorgaram from the western gates. As the British colonial army marched towards Gorgaram from Hadejia to Nguru en route Gorgaram, Mai Saleh, a shrewd and far-seeing leader with an innate gift of administrative acumen summoned Bade chiefs to Goragaram. The Mai persuaded them to submit to the British, thus averting what would have been a massive massacre of the Bade people. Thus, the first challenge encountered by the British after the rather peaceful annexation of the Bade area was how to bring the Bade and Ngizim political units independent of Gorgaram under the control of the central administration at Gorgaram. This constituted the basis for the British introduction of the Emirate System, and the subsequent creation of the Bade District in 1904.

Obviously, the reaction to the British occupation of Bade was relatively peaceful. There are no records of open confrontations between the forces of Mai Saleh and the British troops. Even the British officials testified that Gorgaram was never conquered but merely occupied⁶. Contrary to reports that Bade country was among the Border areas of the extreme north of Borno that offered protracted resistance to the British⁷, Bade experience on the eve of British occupation of Gorgaram was an exception, and reactions to the British colonisation of Bade country was comparatively non-violent.

Colonial Court System in Bade District

The Native Court was an integral component of the Native Authority. Bade Native Court was established on 1st March, 1906, as a Grade “C” Court. The jurisdiction of the court covered Gorgaram town and the entire Bade District. By 1908, the court was authorized to impose fines which were paid into the Native Authority Revenue. All Bade Native Court receipts were to be paid into the Native Treasury with effect from 1st April, 1911, by which expenses and salaries were paid⁸. Half of the revenue generated by the court was used for its upkeep, and half went to its handlers. Mai Saleh ibn Aji served as the first president of the Bade Native Court, while Mallam Muhammed served as the first scribe. Sadly, Mallam Muhammed passed on and was replaced by Mallam Kura in 1909. The other members of the Bade Native Court as of 1916 included Maina Kiari, Galadima Grema, Makinta, and Kachella Jalikwa.

Upgrading of the powers of the Bade Native Court to exercise Grade “B” powers was applied for on 30th June, 1919. The application was subsequently approved on 14th October, 1919, by H.A. Goldsmith, Lieutenant Governor of Northern Nigeria. A Grade “B” Native Court Warrant for Bade Native Court was received on 3rd December, 1919, by G.C. Whiteley, the Assistant District Officer (A.D.O), who was at the time in charge of Potiskum Division.⁹

The Grade “B” Native Court Warrant empowered Bade Native Court to sentence offenders to a maximum of two years imprisonment and twenty four strokes of the Cain, depending on the magnitude of the offence committed. In 1933, new legislation was passed (by the British parliament) which reduced the punishment to a maximum of one year imprisonment and twelve strokes. In 1936, E.C. Figgis, the Assistant District Officer noted that the Alkali Talba of the Bade Native Court carried out the greater part of court work, with the Mai rarely present to officiate most court sittings. It is important to note that the Alkali Talba was not Bade by birth, but a native of Damagaram, but had imbibed the Bade culture, including language, due to his long sojourn in the Native Authority. He was also a scribe. Aggravate offences (such as murder) were transferred to Yelwa courts which had a grade “A” powers of the Appeal court.¹⁰

A Grade “C” Alkali’s Court was established on 16th April, 1942, for Bade District. The Alkali

presided over the Alkali's Court which appealed to the Mai Bede's Court. The Mai Bede's Court was elevated to a Native Court of Appeal, with further appeal to the District Officer. Its power to sentence convicted persons was extended from one-year imprisonment to two years imprisonment. While the jurisdiction of the Alkali's Court was limited the nature of cases it could try, punishment, and fine, the new 1942 Native Court Warrant granted Mai Bede's Court jurisdiction over all persons within Bade District. The court could try anyone who consented to come under its jurisdiction. It could exercise jurisdiction over any person as directed by the Governor through the Resident, irrespective of the person's background. The Bade Native Court could hear criminal, civil, and land related cases. The limit of its power was by its grade.

Effects of the Colonial Court System on the Nigerian Judiciary

There are complicated series of connections between the colonial court system and the post-colonial court system in Nigeria. In other words, the colonial court system had far reaching effects on the Nigerian judiciary. Using the Native Court in Bade District as a case study, it can be safely inferred that some of the major challenges faced by the Nigerian judiciary (i.e. defiance of laws of the land and court orders, neglect of the independence of the judiciary, inadequate training mechanism for lawyers, corruption in the judiciary, etc.) are the long term effects of the colonial court system. In fact, the causes of these problems are deeply rooted in the inadequacies of the British colonial court system. Some of the major effects are listed and explained below.

Defiance of Laws of the Land and Flouting of Court Orders

Colonialism was a violation of existing laws embodied in the customs, traditions and norms of the various indigenous social groupings that occupied the Nigerian area. The changes it brought were bound to have widespread economic, political, social, and legal ramifications. The so-called Indirect Rule System was a hoax, only indirect in theory. In practice, it was a direct imposition of the British way of life on the people of the Nigerian area. In fact, whenever the British colonial officials found that the laws of the land were too dicey to be defied, the British reviewed and/or modified such laws to suit their imperial interest.

In Bade for example, after the British had occupied and annexed Gorgaram, they embarked on a comprehensive re-organisation of the entire Bade area. They introduced a caricature Emirate and elevated the *Mai Bade* to an *Emir*. According to the laws of Bade land, the recognised and acceptable designation for the leader of Bade at the time was *Mai Bade*. The British ignored the stipulation of the laws of Bade and went on to impose the *Emir* title on the *Mai Bade*.

The British went on to create the Bade Native Authority and Bade District for colonial administrative convenience. To ensure that the newly created administrative enclaves contained enough taxable population, the British forcefully incorporated Ngizim villages and settlements into these new administrative enclaves, while at the same time separating other Bade settlements and villages from their kindred. Thus the British acted in defiance to the laws of the land.

The unacceptable manner by which the British colonialists disregarded the laws of the land and people of the Nigerian area was remotely responsible for the current disrespect for the laws of the land and the flouting of court orders by private individuals and members of the executive and legislative arms of the Nigerian government. This practice is particularly detrimental to the nurturing of democratic principles in post-colonial Nigeria. Justice Onnoghen sums it up thus:

“Disobedience of or non-compliance with judicial orders is a recipe for breakdown of law and order. Such developments are at variance with the principle and tenets of the rule of law in a democratic government”¹¹

Neglect of the Independence of the Judiciary

Another effect of the colonial court system on the Nigerian judiciary is the neglect of the

independence of the judiciary. The concept of the independence of the judiciary stipulates that the existence and functioning of the judiciary should be absolutely free from the interference and improper influence of other arms of government, private individuals, and representatives of foreign governments and institutions. This is in order to create a conducive environment for the judiciary to exercise its constitutional duty of dispensing justice without fear, favour, and/or bias.

Unfortunately, the British colonialist by defying the laws of the land had paved the way for a gagged post-colonial Nigerian judicature. A number of practices were responsible for the neglect of the independence of the judiciary. These included appointment and removal of court officials; security of tenure; remuneration and budgetary provision; and unwarranted interference in the judicial processes by individuals, bodies, agencies, and organisations outside the legal system.

These practices that militate against the independence of the judiciary can be traced to the colonial court system. It has been observed that officials of the Native court in Bade district were recommended for appointment by the District Officer through the Resident. These appointments were subject to the ratification/confirmation of the Commissioner/governor of Northern Nigeria. Removal of members of the jury panel also followed the same process verse versa. A situation whereby the jury panel of a court was appointed by certain individuals meant that the entire operation of the court will be subjected to the whims and caprices of the individuals that constituted it. After all it is said that he who pays the piper dictates the tune. This practice continued into the post-colonial Nigerian judiciary system where the President/Governor must confirm the appointment of the Chief Justice of Nigeria/Chief Judge of a State, with prerogative powers to remove same.

Another practice of the colonial court system that gagged the independence of the judiciary was the practice whereby the tenure, remuneration, and budgetary provisions were determined by the British colonial administrators. Subsequently, the tenure of the jury panel of the Native Courts was secured for as long as it continued to protect British imperial interest, even to the detriment of the laws of the land. This practice was subsequently inherited by the post-colonial government and has continued to gag the independence of the judiciary. Justice Auta, a prominent legal practitioner lends his voice to the unpleasant practice, thus:

“I give credit to the federal government that the money due to the judiciary, they give them through the National Judicial Council (NJC) and they spend according to their budget. But in states, where it is stated categorically in the constitution that it should be given to heads of courts, it is not being done. The Chief Judge goes cap in hand to the governor and gives them what they want.”¹²

All of these sum up to unwarranted inference with the judicial process. It in turn works against the Independence of the Judiciary and its constitutional responsibility of dispensing justice without fear, favour and bias.

Corruption in the Judiciary

Corruption is one of the biggest problems threatening public confidence in the Nigerian judiciary. The menace of corruption has eaten deep into all the hierarchy of the judiciary so much so that the judiciary has lost its leadership role in dispute resolution.

The liberalists maintain that corruption which is not peculiar to any human society is a generic phenomenon. According to this school of thought, corruption is deeply rooted in every human society and institution, and as such, can never be eliminated, but can be managed. In other words, corruption in human institutions can never be stopped, but its effects can be minimized through various anti-corruption campaigns, planned policies and programmes. The interpretation of the position of the liberalist school is that it is wrong to view corruption of the Nigerian judiciary as one of the effects of the colonial court system.

The African conservative scholars on the other hand insist that corrupt practices as they exist

today were forced into the African culture by the European colonialists. According to these schools of thought, even though there may have been few instances of corrupt practices in the pre-colonial African setting, the impacts of such isolated cases were far less when compared to what was obtainable in the colonial and post-colonial periods. Going by the postulation of the African conservatives, it is assumed that corruption in the post-colonial Nigerian judicature is an effect of the colonial court system.

At present, we have not found any recorded evidence of any official member of the native court in the Bade district indicted for corrupt practices. However, there were unconfirmed rumours of some wealthy individuals who occasionally approached the Resident at Maiduguri through the District Officers to persuade/convince him to intervene and overrule verdicts of the native court not in their favoured. If these rumours were presumed to be true, then corruption must have been introduced into the colonial court system by the colonial administrators. Justice Walter Onnoghen confirmed the prevalence of corruption in the post-colonial Nigerian judiciary when he stated thus:

“If I say there is no corruption in the judiciary, I will be lying. But we are doing something about it”¹³. Justice Auta also observed thus: “It is regrettable that the image of the judiciary has been tarnished by the notion that the Nigerian judiciary is bedevilled by corrupt elements, hence, the need for an image-building parade”¹⁴.

Inadequate Training Mechanism of Lawyers

There are complaints about the lack of synergy between law faculties in the Universities and the Nigerian Law school. In other words, teachings in university law faculties are theory-based, with little or no practice. The lack of synergy has been said to be responsible for the increasing poor performances at Nigerian law schools. The challenge of inadequate training mechanisms for lawyers has a direct link with the colonial court system.

It has been pointed out that the jury panel of the Bade Native Court consisted of members of the Bade Native Authority. The *Mai Bade* (Emir of Bade) served as the president of the court and was assisted by selected members of the Bade Native Authority. These were individuals that had no prior training on the British legal system, therefore incorporating elements of the British law into the indigenous laws only complicated things. Consequently, the jury panel were mostly in a state of dilemma when cases that contained elements of Western offences and indigenous crimes were brought before it. Hence, the inability to develop adequate training mechanisms that will combine and accommodate elements of Western law and indigenous law has continued to hinder the effective training of lawyers to date. This has constituted one of the effects of the colonial court system on the post-colonial Nigerian judiciary.

Conclusion

The British colonialists defiled existing laws of the polities of the Nigerian area via the imposition of colonial rule. Colonialism was a violation of existing laws of the indigenous people of the Nigerian area. The changes it brought were bound to have widespread economic, political, social, and legal ramifications. Hence, the Colonial court system had far-reaching effects on the Nigerian Judiciary.

Recommendation

Based on the findings of the research, it is recommended that the executive, legislative and executive tiers of government should collaborate to design frameworks and implement policies that will inculcate in Nigerians the spirit of patriotism and selfless service to the motherland. This will help minimize defiance of the laws of the land prevalent among the younger generation.

The constitution of the Federal Republic of Nigeria should be reviewed to prescribe stricter

penalties including commiserate fines and/or prison terms to ensure obedience to court orders.

The principle of separation of powers should be strictly adhered to by the executive and legislative organs of government to ensure and uphold the independence of the judiciary.

The existing training mechanisms for Nigerian lawyers should be reviewed and redesigned to accommodate elements of indigenous laws and allow for greater synergies between Nigerian universities and law schools.

The working conditions of judicial workers should be reviewed to include befitting remuneration and welfare packages to minimize cases of sharp practices in the dispensation of justice in Nigerian courts of law.

There should be a complete overhaul of the Nigerian judicial system with the aim of removing alien practices that are not compatible with the indigenous traditions and/or cultures of Nigeria.

Endnotes

1 NAK/Mai Prof/2647 Vol.2/NO.B.7A/X./1936/37 Bede Emirate General Report, paragraph 10.

2 Ibid. Para 10.

3 *Ibid.* Para 10.

4 Kirk-Greene, A. H., Fremantle, J. M., Migeod, C. O., Palmer, H. R., & Welman, J. B. (1972). *The Eastern Kingdoms. In J. R. Willis, Gazeteers of the Northern Provinces of Nigeria. Vol. II.* London: Frank Cass, p.39

5 NAK/ Mai Prof /NO.2647/15 Bade Emirate-General Report, Paragraph 31

6 NAK/ Mai Prof/2647 vol.1/NO.B.7A/X./ 15/10/1936/37 Bade Emirate-General Report on: by Mr. E.C. Figgis, Appendix A. Bade Emirate Units. Historical Details: Pedigree. p.15, paragraph 31

7 Ladan Usman, “*History of Urbannization in Borno: A study of the Yelwa (Maiduguri) Area, C. 1880-1960,*” (Ph.D Theses. Department of History, Ahmadu Bello University, Zaria, 2002), p.114.

8 NAK/Mai Prof/2826/ Bede Native Court, Grade “B” Limited, p.1

9 *Ibid*, p.20

10 NAK/Mai Prof/2647 vol.2/NO./B.7A/X./1936/37 Bade Emirate-General Report on: by Mr. E.C. Figgis, paragraphs 89-90

11 John Chuks Azu, “*What Judges say about six major judicial challenges*” (Lagos: Dailytrust, 03 October, 2017), accessed February 15, 2019. <https://www.dailytrust.com.ng>.

12 Ibid.

13 Ibid.

14 Ibid.