Colonial Justice Administration and the Dislocation of Alternative Dispute Resolution Mechanism in Post Colonial Africa: The Uromi Colonial Situation

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Abstract
The paper draws attention to the need to incorporate some aspects of African pre-colonial judicial practices in post-colonial administration of justice in Africa as that would aid in the mitigation of crisis and conflict through alternative dispute resolution mechanism. This is argued against the backdrop that laws are instruments meant to regulate the society for the purpose of engendering peaceful co-existence. In pre-colonial Africa, the administration of justice rested on the twin connected pillars of reverence for elders and fear of false oath swearing. Using the Uromi of Edo State, Nigeria as a case study, the paper argues that colonial legal tradition in Africa displaced the twin-pillar of pre-colonial justice system with the practice of over reliance on material evidence to determine the outcome of litigation. The paper concludes that the resultant effect is that post-colonial African judicial system is unable to bridge peace among disputants.

Key words: Colonial, Dispute, Africa, Uromi, Elders, Oath Swearing

Introduction

Hart’s classical work, The Concept of Law raises some issues for consideration. Hart seeks to probe if the purpose of law is to forcefully compel obedience or steer the conscience of morality against disobedience in maintaining social order. Hart says “this close connexion between justice in the administration of the law and the very notion of a rule has tempted some famous thinkers to identify justice with conformity to law. Yet plainly this is an error” (Hart 1961:157). Put differently, is there a nexus between law and morality, or law and justice? In that wise, what was the purpose of law in pre colonial and colonial Africa? Lord Hailey answers the question that African justice system was culturally structured to address the roots of disputes and placate the aggrieved, unlike that of the European that was designed to punish offenders (Betts, 1985). The apparent difference in the African and European concepts of law is the bane of effective alternative dispute resolution mechanism in post-colonial Africa. Using the Uromi community as a case situation, colonial rule seriously affected the people’s pre-colonial judicial system. The colonial administration introduced the native and clan courts to specifically address grievances peculiar to the African environment but using alien legal instruments. The structure of the native court fundamentally compromised two major pillars of pre-colonial judiciary in Uromi, which were the reverence for elders and customary oath swearing, otherwise, called Juju by the British. The various reforms in the colonial judiciary did not improve the administration of justice in Uromi. The creation of chieftaincy by the colonial authorities to meet up with the desire to have judges in the created clan
courts provoked some level of protest from the people as such action ran counter to the Uromi customary norms of appointing chiefs. Added to what has been said, were the activities of the native court which aggravated some measure of discontent as simple disputes before it were turned into prolonged litigation. The paper demonstrate that pre-colonial African laws were directed at moralizing offences in order to discourage infraction, while colonial laws were devoid of moral values in its adjudication. The consequence of colonial laws are observed in the manner litigation are handled in post colonial Africa which leads to further acrimony rather than reconciliation among litigants on one hand, and has encouraged impunities against material and immaterial social order.

There are various definitions of alternative dispute resolution (ADR), but all definitions come down to one point. ADR is an innovative judicial practice of arbitration that encourages litigants to settle disputes without necessarily using the traditional court process. This method of resolving dispute through some of the following diplomatic channels such as, mediation, conciliation, negotiation, intercession, evaluation, and use of good offices are considered as alternative to the age-long established legal frame work of rigidity, time duration, and judicial complexities. For the African, ADR as it is presently conceived by western jurists will not be useful in handling disputes in most parts of the African continent. The pre-colonial African judicial system was designed in such a way that litigants were persuaded to respect decisions reached because of the pivotal role of elders, and the psychological and spiritual effect of oath swearing. This is so, because colonial rule could not completely dismantle African communal way of live. Most people in Africa still live in the rural areas, which practitioners of ADR must take into consideration if ADR must achieve its objectives. In that wise, the mechanism of ADR should be properly conceptualised to suit the African communal environment.

The African customary judicial system should be understood as the involvement of the totality of the cultural environment in the mediation of disputes. By cultural environment, we mean the involvement of the community elders, titled men, priest and all other instruments considered relevant to disputes resolution. For example, the European traditional court practices do not have any space for the consideration of litigation that may have to do with witchcraft accusation, which is an integral part of African spirituality that can be abused by those who have the knowledge of witchcraft. The position could be that any policy on alternative dispute resolution mechanism (ADRM) without due attention to the peculiar African personality may have some challenges.

The Uromi Community

Uromi is located in the north-eastern part of Esanland. The Esan (misspelled as Ishan by colonial authority) region is made up of thirty two major communities east of Benin, the capital city of Edo State, south-south, Nigeria. The Uromi community is divided into three sub-groups of Okhiode, Obiruan and Obiyuan. The Okhiode has Egbellie, Equarrre, Oyomo, Onewa, Utako, Unuwazi and Arue. The Obiruan group is made up of Ebhoyoma, Efandion, Uwalor, Idumuza, Ivue, Obeidu, Eror, Ubieaunmun Ne Uwa, Ubierennum Ne Oko and Ekhue. The Obiyuan group has Awo, Amedokhia and Ukoni. Before the advent of colonial rule, the socio-political and economic activities in the community were determined by the Onojie (king) and elders because
they were the custodians of customary authority and therefore empowered to resolve crisis and institute mechanism to minimize re-occurrence. However, the elders were more visible than the Onojie because the day to day administration of the various villages was in the care of elders who were accountable to the Onojie in the palace.

**Pre-Colonial Uromi Judicial System**

Uromi laws were derived from two main sources, the elders and the Onojie in Council. The Onojie in Council could make pronouncement regarding the regulation of activities and such pronouncement would bind on all strata of social and political units in Uromi (Ojiefoh, 2002). The functions of chiefs and kings in the African judicial system is not peculiar to Uromi alone but an African judicial reality. Among the Shilluk of Sudan, the justice system was under the effective control of chiefs and the king (Booker, 2010).

In the customary pre-colonial Nigerian communities, laws as Adewoye has noted, were to safeguard the total wellbeing of the community which included the spiritual, economic, social and political character (Adewoye, 1977). Correspondingly, the function of law in pre-colonial Uromi was to sustain customary norms. Therefore, an offence would be any act either by omission or commission that ran contrary to the people’s custom and traditions (Ojiefoh). Offenders were tried either by the elders (men of fifty years and above) or the Onojie, depending on the nature and gravity of offence. For example, domestic issues were mostly tried by village elders, while communal cases and capital crimes were tried by the Onojie. The Uromi traditional system of dispute resolution structurally rested on the following four institutions listed below:

- **Family head** = for intra kindred disputes
- **Quarter head** = for inter family disputes
- **Village head** = for inter quarter dispute
- **Onojie** = inter village disputes and capital offence

Although the above pattern was not fixated, it outlined an intelligent method of handling various kinds of disputes (Butcher, 1982). Butcher records that in the Uromi customary judicial system, oaths were not sworn before statements were made by the parties involved in dispute, ŉany swearing would be to determine doubtful pointsũ (Butcher). Butcher also noted that the first step would be to invite the disputing parties before the Edion (senior elders) with the hope of amicably settling them (Butcher). The idea for the convocation of elders council was meant to redress the aggrieved and not necessarily to punish the guilty. If that step failed to produce the desired effects, both parties would be made to swear to an oath either at the family, quarter or village shrine to vindicate the innocent. Oath swearing was the second stage in the process of arriving at solutions and the guilty expected to make reparation otherwise, the people believed the god-ancestors would send down their wrath on the guilty (Odianosen, 2009: Interview). Adewoye criticised the customary judicial processes of oath swearing as ŉsimply substitutes for thorough investigationũ (Adewoye, 10). Adewoyeũ critique needs some comments.

The primary objective of oath swearing in customary judicial system was to involve the ancestors as co-judges in resolving disputes. The people believed that there was a relational link between the living and the dead and that nothing could be hidden from the spirit-ancestors (Ohamen, 2009: Interview). The spirituality of
pre-colonial African justice system was ingrained in the people’s religious belief. African worldview was influenced by religious belief because every event was associated with a spirit force (Rodney, 1972). Opoku notes this pervasiveness of religion through the total way of life of African peoples gave traditional religion a remarkable wholeness within the context of the culture out of which it originated (Opoku, 1985:508). This belief in the spirituality in justice is expressed in the African ethical and moral codes as observed among the Nuer and Atuot of Sudan (Booker). Rightly so, the Uromi religious worship could be categorized into three. They were ancestral, nature and hero worship, but ancestral worship was regarded as the second most important spiritual authority that was revered in the hierarchy of spiritual forces. The spiritual importance of ancestral worship is ably expressed by Opoku that,

the general conception of man was that he was a compound of immaterial and material substance. The immaterial part of man (the soul) survived him after death, while the material part (the body) disintegrated after death. Death therefore did not end life; it was an extension of life. The dead remained members of society and there was believed to be a community of the dead alongside the community of the living, and there was a symbiotic relationship between the two communities. Human society was an unbroken family made up of the dead, the living and the yet unborn (Opoku).

Every family compound in pre-colonial Uromi had a shrine dedicated to ancestral worship. Simply put, ancestral worship in Uromi was the worship of the departed father, which empowered the Omminjiogbe (head of the family) to act as the custodian of the family traditions and norms (Ukhun, 2007).

Again, to argue that oath swearing was an easy way of avoiding tedious investigation is tantamount to separating a people’s spiritual orientation from their culture. In most parts of Africa, as it was in Uromi, the people believed that, as Igboin avers:

the universe... is a composite one; a blending of the divine, spirit, human, animate and inanimate beings, which constantly interact with one another. These visible and invisible elements are what have been referred to as the forces of life or vital forces. Moral codes is (sic) steeped in tradition, which flows from God to the ancestors. The ancestors are the repositories of the tradition [and through the elders], the morality of the society is maintained (Igboin, 2010).

The elders were regarded as the custodians of political, socio-economic and spiritual laws. Those cultural privileges also served as instrument of control to direct all judicial activities in the community. Therefore, oath swearing administered by the elders in Uromi customary judicial practice should be understood as one of the most credible evidence to ascertain or verify claims and counter claims.

The role of elders was not discarded by the Uromi people in the face of the colonial native court, even if the elders’ position was not recognised by the court. For example, in a dispute over animal ownership between
Ireobhude and Eigbedion, the elders of the community called them to amicably resolve the dispute as reported by Pa Aneni, one of the elders who said ìwe, the elders asked both parties to meet us in our family meeting to determine who the rightful owner of the sheep was ì (NAI ID, 215/IV, 1956). This scenario demonstrates that even in the heart of colonialism, most people still took their complaints to the court of customary judiciary.

The Onojie handled cases of capital offences such as adultery with the Onojie’s wife (ves), murder, witchcraft and others in that category. Adultery with the Onojie’s wife was a criminal offence that attracted instant death penalty, this was in line with the people’s custom (Ojefoh). A pre-meditated murder in pre-colonial Uromi was tried by the Onojie and the accused could be executed if found guilty, though the execution could be averted if the murderer’s family provided another person to replace the life lost in the other family. If it was an established case of manslaughter, the guilty was convicted to a permanent life of servitude in the palace of the Onojie and could only be released on his prerogative, (Ojiefoh), though the properties of the convicted murderers were confiscated by the Onojie. (Okogie, 1994) In the issue of witchcraft accusation, the accused would be taken to the Onojie’s palace and made to go through various kinds of ordeal and oath swearing to ascertain the veracity of the claim. From the foregoing, it is noticeable that the customary judicial system of the Uromi people was structured in a way to address the causes of conflict through the diplomatic channels of mediation, conciliation, negotiation, intercession, evaluation, and use of good offices and not necessarily intended to punish the offender, except in some grievous situations.

**Evolution of the Colonial Native Court in Nigeria**

It may be considered as a waste of ink defining the concept of colonialism as there are vast amount of literature on the subject. However, it is still important to state that colonialism in its entirety is the political overthrown of a country by a more powerful country. The direct and indirect consequence of the political take over is manifested in the fundamental changes that usually occur in the colonised socio-political and economic strata of that society. For the African, colonialism is the distortion of African cultural values without replacing them with corresponding values. That is why Cooper has admonished scholars to examine thoughtfully the very categories by which we understand the colonies’ past and the ex-colonies future were shaped by the process of colonization (Cooper, 2005:3). From Cooper’s insight, it is agreeable that contemporary Africa is a product of colonial policies.

The evolutionary history of what later became known as the native court in Southern Nigeria has been discussed in details by prominent Nigerian historians (Igbafe, 1979). But it suffices to say that the earliest form of British courts in Southern Nigeria began from 1854 with the court of equity established to settle disputes between European and African traders in the Niger Delta region (Adewoye). With the declaration of protectorate over the oil rivers by the British government in 1885 and the appointment of Consul-General to administer the region, the courts of equity began to assume characteristics of a proper court and with time they became known as native courts (Igbafe). Sir Ralph Moore, High Commissioner and Consul-General of the Niger Coast Protectorate provided the legal framework for the establishment of native courts in the whole of Southern Nigeria. As noted in the proclamation:
The courts were to administer ‘Native’ laws and custom not opposed to natural morality and humanity and any new law or modification of old laws sanctioned by the government. They were to have jurisdiction over such communal and civil cases to which ‘native law’ applied and in which all the parties concerned were natives (Osagie, 2007).

Even Lord Lugard aptly expressed the colonial opinion when he said the court was primarily to ‘inculcate a sense of responsibility, and evolve among a primitive community some sense of discipline and respect for authority’ (Betts, 324). From the outset, it is clear that the colonial established native court rested on wrong foundational premise. The African conceptualization of morality and humanity were influenced by the communal understanding and practices within the spiritual environment, so the individual expression of morality and justice were determined by the culture of birth and upbringing. This was at variance with European instruction on justice and morality at that historical phase of African engagement with European social structure. Based on European ignorance of African cultural relational concept of justice, Europeans considered African justice system as repugnant to natural justice and humanity. This contradiction played itself out in the native court as shall be discussed shortly. The European misconception of the nature of African society ultimately determined the manner of legislature introduced into the African communities including that of Uromi.

The Native Court and Its Impact in the District of Uromi

By 1900, the British had almost completed the use of superior militarily technology to overthrow the indigenous political structure in Nigeria and by 1901, the Uromi community had come under British colonial administration. The British divided the country into provinces for administrative purposes. The former Benin kingdom was one of the provinces with five divisions including Esan (Ishan) as one of the divisions. The Esan division was further sub-divided into five districts and Uromi was one of the districts. The native court that was eventually established in the territories of Southern Nigeria was graded from A to D while the first native court established in the Ishan Division in 1903 was sited at Uromi as a Grade B court (Butcher). The court was placed under the jurisdiction of the Ubiaja (one of the Esan towns) court when it was established, but in 1920, the Uromi court became an independent court (NAI BP, 210/20, 1920). However, Onojie Okojie of Uromi was appointed as the Vice-President of the court with the District Officer as President. Since the District Officer was irregular at attendance, Okojie became the de facto President with other members of the court drawn from Uromi villages (Ojiefoh).

Between 1914 and 1932, the operations of the native court were re-organised with the hope of positioning the court for better efficiency. It was thought by the Governor-General that more courts of different jurisdictions were needed to make justice available to the majority of the people. Igbafe, has summarised the 1914 judicial reforms as they ushered in the introduction of three ordinances: the Supreme, Provincial and Native Courts. The major reform in the native court was the removal of the District Officer and appointment of
the village head (king) as the President of the court, but in reality, the District Officer was still practically in charge of the judiciary (Igbafe).

The 1914 judicial reform was marred primarily with the exclusion of village chiefs (*Edion*) from the administration of justice and the creation of the warrant chieftaincy (persons appointed by the colonial authority as chiefs). The reform adversely affected the Uromi people because that was the first time elders were excluded from judicial administration. Before the establishment of the native court in Uromi, the judicial system was such that judgments were respected because they were rendered by customarily timehonoured individuals in line with custom and tradition. The judges were deemed qualified to preside over cases because either they were heads of families, quarters, villages or chiefs in their own respect (Omokhua, 2010: Interview).

Leadership position in Uromi village administration was determined either by age, promotion or inheritance, but with the appointment of warrant chiefs in Southern Nigeria and in Uromi, a further blow was dealt to the structure of pre-colonial administration of justice. The institution of the warrant chieftaincy was an anathema in the people’s tradition. The consequence of such appointment affected the people’s regard for the courts, especially when those appointed as warrant chiefs became overbearing in Uromi. The activities of the warrant chiefs were not only worrisome in Uromi alone, but in other places where the warrant chief institution existed. Their attitude in Uromi affected the quality of judgments pronounced by the courts, especially from the clan courts which left much to be desired.

Due to the nature of their appointment, warrant chiefs abused their positions of responsibility to the chagrin of the people and elders of the community. As part of the move to assuage the magnitude of complaints and worries of Uromi people on the nefarious activities of warrant chiefs, the District Officer of Ishan Division had a meeting on 5 September, 1931 with Uromi elders and titled men. At the meeting, he explained that membership of the native court was not tantamount to being quarter chiefs, as the customary recognised quarter heads remained in charge (NAI BP, 39/28.B, 1931). Reports against some warrant chiefs were considered at the meeting which led to their suspension or cancellation from the court membership based on the recommendation of the District Officer (DO) and approved by the Resident (NAI BP, 39/28.B).

It should, however, be stated that the reaction of the colonial authorities to the activities of warrant chiefs was not done because the colonial authorities were sympathetic to the plight of the elders and other customary institutions. Rather, the colonial authorities knew that the capacity to impose what Balandier calls “colonial peace” would create the right atmosphere for colonial exploitation (Balandier, 1970:31). The series of complaints against the activities of those warrant chiefs necessitated the modification of the 1914 reforms on the native court to accommodate the creation of the village and clan courts not only in Uromi, but the whole of Southern Nigeria. The colonial authority realized that without the involvement of the elders, the native court would be less effective and that necessitated the later judicial reforms of 1932.

The 1932 reforms, though gave some consideration to the place of customary institution in the dispensation of justice, but did not essentially improve the administration of justice in Uromi because of the continued misdemeanour of warrant chiefs. The people became disenchanted and therefore began a series of
petitions against those warrant chiefs. For example, community leaders from the village of Amedokhian wrote a petition that:

We the Ujagbedion group of Amedokhian are here to tell you how we rule our village. Some years ago when people want to steal another’s properties, they used to go in secret ways. But nowadays it is not so in our village again. They go like soldiers. We do not want this at all. It wonders us how a thief could rule a place in the right way. There were no such things since this man named Okharedia has not been made a Chief. He is the leader of the thieves (Owobu, 2010).

The people of Uromi sustained their protest and appealed to the District Officer in 1941 to abolish the nineteen clan courts in their community, “because of partial judgments” (NAI ID, 727, 1941). The nineteen clan courts were therefore closed and four group courts created in 1942 (NAI ID, 727, 1942).

**Impact of the Native Court on Pre Colonial Judicial Administration**

The composition of the native court and the use of alien judicial processes greatly affected the manner disputes were resolved. Three structural impacts are observable. They are firstly, the incapacitation of the cultural roles of elders, secondly, the displacement of the place of oath swearing and thirdly, abuse of judicial privileges.

Firstly, the institution of native court incapacitated customary chiefs from being the last point of judicial pronouncement. Their words no longer carried much weight as they were in the pre colonial era. For example, let us make reference again to the case between Ireobhude and Eigbedion earlier cited. Elders in their community had made attempt to resolve the feud, but their efforts were thwarted when Ireobhude took the case to court. One of the elders explained their frustration and disappointment when he said “we heard that the complainant had taken out action for stealing and we had to hands off the matter” (NAI ID, 743/620, 1953).

The incapacitation also created the atmosphere for elders to be used as witnesses in court. This was a reversal in role and function. In pre colonial era, elders were not really considered as witnesses, rather were invited to clarify issues and not to testify or be humiliated. In the colonial era, elders lost those special privileges as they became frequent visitors to the native court as star witnesses or co-defendants in suit. One of such examples could be gleaned from the correspondence of Egbadon of Arue village to the District Officer. Egbadon complained that the verdict against him was biased. That he needed a review of the case because the court clerk prevented his witnesses from testifying. In his words, “I have several elders as witnesses to this case but the court clerk drive (sic) them away in the open court and hurriedly pass judgment” (NAI ID, 215/IV, 1956). Egbadon’s complaints brings to the fore the irrelevance and disrespect of the place of elders in the colonial court.

Another observable pattern of structural weakness was that most elders failed to realize that their customary authority had given way to alien colonial authority as the appropriation of land was under the jurisdiction of colonial edict and no longer Uromi customary preserve. An interesting example of the delusion
of some elders from Amedokhian played out in the case of a land dispute between Aletor and Okosun, both from Amedokhian community. The case had been addressed by their elders, which necessitated the elders to send a correspondence to the District Officer to respect the custom of the people on land tenureship. In the correspondence, the elders noted \( \text{we have to add for your information that, according to our Native Law and Custom, our village land is communal: no member of the village can be asked not to build a house or live in the village land} \) (NAI ID, 743, Vol. III, 1956).

For the sake of clarity, it is important to explain the rationale for the elders' conviction that the land dispute had been settled. In the Uromi and Esan worldview, land was communally owned, believed to have been bequeathed to them by Osanobua (God) through the intercession of the ancestors. The Onojie and other village administrative units, therefore, held the land in trust for the various families. Customarily, land was not to be sold in Uromi but leased out by the Edion for all meaningful and productive engagements. Therefore, it was forbidden for anybody to lay claim to any possession of land without permission. However, few dispute over land ownership where resolved by the elders and their decisions were final. That was why the Esan custom on land ownership made it possible to have \( \text{rarity of land disputes} \) (Okogie, 137).

Secondly, the spiritual, moral and psychological aspects of customary judiciary were also affected by the presence of the native court. The over reliance on material evidence supplanted the relevance of oath swearing. The case of Eigbereniolen of Arue who sued six persons to the native court for theft of his property is a good example of how emphasis on material evidence affected the judgment. Both parties presented their positions but at the end of the proceedings, the court discharged and acquitted the accused \( \text{on grounds of no concrete evidence to warrant their conviction} \) (NAI ID, 743, Vol. III, 1956).

The importance of material evidence in the native court also brought its own contradiction and absurdity. The native court members even observed that over-reliance on material evidence to reach judgment could be counter-productive. Some matters considered to be of serious concern to the community were handled with levity. For example, Stealing of planted yam seedling was considered a capital offence in Uromi because the act was comparable to exterminating a household. Butcher noted this fact about Uromi when he wrote:

stealing planted yams from the ground \( \text{meant} \) that the principle of reproduction was being attacked, and hence the very life of the community. Thus in native eyes to take a man's life by violence was no worse than to endanger his food supply . . . . To steal yam was merely one yam. But a yam in the ground if left undisturbed multiplied and increased and provided numbers of seed yams for the next harvest (Butcher).

It was to prevent such traumatic situation that the Uromi and Esan custom considered stealing of planted yam seedlings as murder and therefore, prescribed stringent punishment for offenders. With the introduction of the native court, offenders were either sentenced to jail term, fined or suffer both. That style of punishment did not solve the problem already created by the thief. To lock the offender away kept him from restitution. The payment of fine would only serve its purpose if there were yam seedling to buy, that was if the theft was
discovered within the planting season. The native court judgment did not take into consideration the amount of energy and time the victim – farmer would have to expend in repeating the whole process of re-planting the yam seedling. Two of such cases of stealing of yam seedling before the native court in Uromi would suffice to justify the contention that the native court was incapable of addressing the judicial needs of the people.

Okeralen of Ewoyi sued Emiowele of Ubierumu Nowa to the Oberhuan Group Court held on 8 December, 1954 for theft of his yam seedling valued at £10. Okeralen complained that he had been a victim of repeated theft of his yam seedling but this time found them in the compound of the accused. Emiowele denied the charge on the grounds that he was not in the community when the said crime took place. His denial did not convince the court and so was found guilty and sentenced to six months imprisonment with a cost of £3 as damages to the plaintiff (NAI ID, 743, Vol. III, 1954). However, Emiowele appealed the judgment at the Uromi Uzea Federal Court where the earlier judgment of the lower court was set aside. This was done on the premise that the judgment lacked merit since Emiowele was not caught with the yam seedling even though they were found in his compound (NAI ID, 743, Vol. III).

All the members of the Federal Court agreed with the appealed judgment except Mr. Eriakha who said they are not in agreement with the members. I confirmed the judgment of the Oberhuan Group Court on the ground that there was alarm already before the stolen yam could be discovered. It is not in all cases that an accused person is caught at the same spot (NAI ID, 743, Vol. III). Eriakha’s dissenting judgment brings to the fore, the inherent contradiction in the colonial justice system. His minority position reflects ancient customary wisdom that, it was not in all cases a thief would be caught in the act, but through traditional means, the fact would be established. In the customary judicial practice, Mr. Emiowele would have been compelled to swear to an oath to establish his innocence.

Be that as it may, there were instances the colonial native court had to make recourse to some aspect of pre-colonial Uromi justice practices to resolve some complex matters. Although the court did not give any preference to the intrinsic value of oath swearing except when it was used cosmetically to elicit information from litigants, which demonstrated its usefulness in crisis and conflict management at the court. For example, The Resident, Onitsha Province in eastern Nigeria understood the psychological effect of oath swearing on the African person and therefore advised his colleagues Ũyoun oath is to the people the very best evidence available (Adewoye, 183). Contrary to the understanding of the Resident of Onitsha Province, the District Officer (1941) of Ishan Division disregarded that position as he remarked that Ũthere is too frequent recourse to juju-swearing to decide a case where the evidence is insufficient and in fact parties to the case are usually the prime movers in having juju sworn. The quashing of such judgments in all cases is the only remedy (NAI ID, 727).

Litigants also took advantage of the native court and abused legal virtue because of the situation that made oath swearing optional and material evidence compulsory. The fear of ancestral repercussion if perjury was committed lost its place in the native court. Available evidence suggests that most litigants hired witnesses to testify in some cases and in most situations those witnesses did not understand the merit in the cases. Ejedawe charged three persons he believed dug up and stole his growing yam seedling from his farm. In
Ejedawe’s narration, one of the accused by name Oseghale was his close friend who he visited and found his stolen yam seedling in his compound. Ejedawe and Oseghale brought their witnesses. Those of Ejedawe were consistent in their accounts even under cross-examination by members of the court. Oseghale’s witnesses contradicted themselves as it was obvious that they were not familiar with the major issue and nature of the case they came as witnesses (NAI ID, 743, Vol. III). The displacement of cultural oath administration in post colonial judiciary was not peculiar to Uromi alone. At a discourse in 1974, the Chief Justice of the then Mid-Western State of Nigeria, Justice Mason A. Begho note:

The alarming rate of perjury by witnesses in court is a threat to the true administration of justice. It is amazing the way some people tell lies in court with reckless abandon. Oath in this generation has lost its essence, its awe and dread. Pagans do not now take seriously swearing on machete or iron in court as the swearing ceremony is less ritualistic and less awe-inspiring than it used to be in the olden days (Tamuno, 1994).

Thirdly, the native court encouraged prolonged trial due to review of cases. The practice of review of cases by superior courts was encouraged by colonial authority because of the revenue derived from appeals. In one of the correspondence between the District Officer and the scribe of the Uromi native court, the District Officer, A.V. Scallon, warned the scribe never to turn back anybody that had paid the mandatory two shillings as search fee for review of cases (NAI ID, 20, Vol. 2, 1935). It could be suggested that the need to raise revenue might have compelled the District Officer to encourage litigants to seek for review. For example, Mr. James Oshor wrote to request for review of a judgment against him. The District Officer, Sgd T.F. Barker replied that I have reviewed the case and confirmed the judgment of the native court. If you are not satisfied with my review order, you can apply to the Resident, Benin Province for further review (NAI ID, 215/V, 1956) It was such practices that unnecessarily prolonged the adjudication of cases.

Another example of delay in judgments was the murder charge against Mr. Iweanoge, an agent of John Holt Company in Uromi. He was accused in 1937 of various crimes by the entire Uromi community among which were assault, adultery with one of the Onojie’s wives, and the murder of a woman with his shot double barrel gun licensed in 1926 (NAI ID, 669, 1926). It however took about eight years before the case was closed in 1944 (NAI ID, 669, 1926-1944). The delay in judgments could be attributable to the rotational manner judges were appointed into the colonial court system to serve in communities they were not familiar with and the judges were therefore regarded as strangers The judges handled cases and pronounced judgments based on the strength of material evidence before the court and not influenced by their familiarity of the litigants. Unlike in the pre colonial Uromi judiciary where judges were not appointed by fiat, rather they were selected based on seniority in the family lineage and then culturally empowered to adjudicate in various types of cases. Therefore, those pre colonial judges were permanent and that made them to be directly familiar with the history of cases. That fact was noted by Butcher in his intelligence report that:

ancient administrative and judicial system were highly organized, many duties being definitely allocated rather than performed by casual appointment
that the whole village or ward was interested in the settlement of disputes, and that every man was tried by his own people. This is very different from the present system of a bench of rotationary members (Butcher).

The native court was also deficient in resolving cases of witchcraft accusation. Two major factors affected its capacity to handle reported cases. Firstly, the policy that permitted only Grade A courts to handle witchcraft related cases complicated issues as the Uromi native court was a Grade B Court. The implication of the native court's limitation for our study is that it affected the number of reported cases of witchcraft accusation in Uromi. This is reflected in the District Officer's annual report of 1936 that only seventy cases of witchcraft accusations were handled at the native courts in the Ishan Division out of which only one case was handled by the Uromi native court (NAI BP, 736, 1936).

Secondly, the colonial authorities in Nigeria were not convinced that witches had the capacity to wreck havoc and as such treated all reported cases of witchcraft attack as mere figment of the people's religious hallucinations. In order to enhance the capacity of the native courts to handle witchcraft cases, Mr. K. Dewar was commissioned to compile a report on witchcraft, which was sent to all the Residents in the Provinces including Sgd. G. S. Hughes, the Resident of the Benin Province. Dewar advised his colleagues in the report to be cautious when dealing with witchcraft cases since witchcraft belief had to do with religious sentiments. Dewar wrote:

interference with tribal methods of witch-finding and witch-punishing may be expected to produce certain undesirable effects, and unless these effects themselves can be adequately countered, such interference may well afford an example of the remedy being worse than the disease (NAI BP, 736, 1934).

However, to limit avoidable death through sasswood ordeal, Dewar counselled colonial administrators to adopt judicial action against accused witches with the threat of severe punishment or oath administration on the accused as that may reduce witchcraft activities in their domain (NAI BP, 736). Since the native court could not adequately satisfy the people's quest for extracting confession from accused witches, it drove underground the practice of witch hunting as the people secretly handled reported cases in the thick of the forest to avoid litigation (Omonkhua).

Conclusion

The pre colonial judicial system depended solely on cultural precedent to adjudicate in disputes, while the British established native court system introduced new elements that fundamentally affected the Uromi way of customary administration of justice. The change in Uromi ancient judicial administration became noticeable when all cases and appeals were directed to the District Officer as the head and final authority and not the elders and king. The native court displaced, and in some instances minimized the functionality of the elders, compromised the relevance of oath swearing and encouraged abuse of judicial process. At the end of the day, colonial rule created a judicial mix-grill in Uromi. It was a mix-grill of unusual norms between African
customary and European judicial processes that is still practiced in post colonial Africa. The continued practice could make it difficult to entrench a workable system of African style Alternative Dispute Resolution Mechanism (ADRM). Efforts to institutionalise the practice of ADRM in the justice system of Africa may not achieve its desired effects if the philosophy, roles of elders and the place of oath swearing are not intelligently defined. In that regards, community based courts of arbitration should be instituted to be headed by culturally recognised elders in the communities, with the understanding, and acceptance that customary oath administration is acceptable in the courts. African trained jurist in European legal tradition should undergo training in African customary judicial practices to complement the roles of elders. Recognising the fact that there may not be an alternative to African traditional justice system, practitioners of ADRM in Africa should create room for the application of wisdom adjudication as much as emphasis on material evidence. If due consideration is given to some of these suggestion, it may curtail the culture of prolongation of court cases associated with the modern court system. Above all, the African dispute resolution mechanism ensures decisions reached are most often binding on parties.

References
NAI, Benin Province (hereafter NAI BP) 210/20 Handing over notes from W.B. Rumman DO to E.C. Palmer dated 16 February, 1920.
NAI BP 39/28/Bishan Division Personnel of Native Courts I Changes of 1928; Memorandum from the District Officer Ishan Division to the Resident, Benin Province dated 7 September, 1931 under the subject Report on the Chiefs of Uromi.
NAI BP 736: Memorandum from D O Ishan Division to the Resident, Benin Province dated 14th December, 1936.
NAI BP 736: Memorandum from the Secretary on the subject on Witchcraft dated 7th March, 1934, Notes on Witchcraft in its relation to Administrative Problems by Mr. K. Dewar.
NAI, Ishan Division (hereafter NAI ID) 215/IV, Uromi Native Court: Matters Affecting Judgment from the Okhiode Group Court, 25 August 1956.


NAI ID 743 Vol. III: Appeal from Uromi Clan Court to District Officer dated 8/7/1956.


NAI ID 743, Vol. III: Appeal from Uromi Clan Court Okeralen vs Emiowele, Oberhuan group court held on 8/12/1954.

NAI ID 743 Vol. III: appeal of judgment by Emiowele at the Uromi-Uzea Federal Court held on 14th December, 1954.

NAI ID 20 Vol 2: Uromi Native Court Matters Affecting, 27/9/1935.


NAI ID 669: Approved letter of license to bear a D.B. Shot Gun issued to Mr. Philip Iweanoge, 31/8/1926.

Correspondence from Sunday Ighalo to the District Officer indicating interest in buying the gun for 7 pounds (29th August, 1944), correspondence from Sunday Ighalo to the District Officer reminding him of his interest and even willing to increase the bidding price by 10 shilling above whatever price any buyer may bid for (4th September, 1944). Another correspondence to the District Officer that conveyed Ighalo’s desperation to buy the gun at any amount (2nd November, 1944).


Oral Interview
Ohamen, John (2009), (c. 65). Oral Interview, Ukoni-Uromi, retired civil servant, 15th April.
Omonkhua, Christopher (2010), (c70). Oral Interview, Ukoni-Uromi, retired civil servant, 18th October.