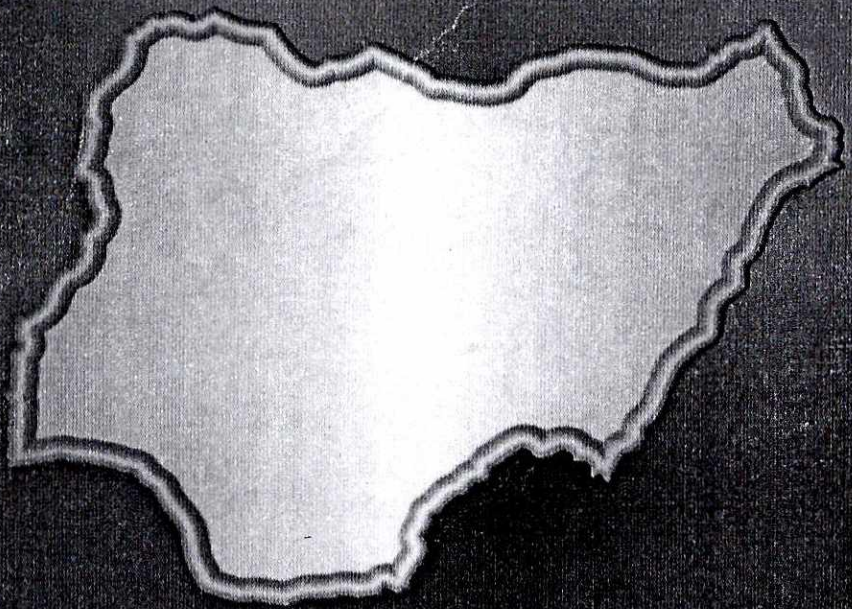
LEADING ISSUES IN THE POLITICAL ECONOMY OF NIGERIA



Edited by

K. U. NNADI

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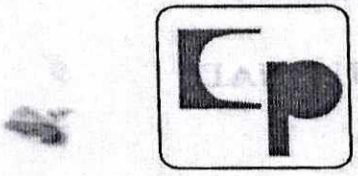

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TABLE OF CONTENTS

CHAPTER 4

THE NATIVE COURT AS AN INSTRUMENT OF CONFLICT RESOLUTION IN COLONIAL ILESA, 1900-1960.

ALO, Lawrence Kolawole

The nineteenth century marked a watershed in African history, especially among the Yoruba of Nigeria. It was characterized by wars fought consistently between C. 1817 and 1893, huge supply of slave labor to the Atlantic and domestic markets, heavy population movement first into the forest and later towards areas settled by European officials and their agents, transition from slave to 'legitimate' commerce and finall the imposition of British rule. These developments affected and transformed aspects of the indigenous culture. It altered the relationship between dependent women and men and their overlords, reconfigured gender and generational issues. It also changed the nature commercial, land and property contestations. In essence, why colonial rule was partly justified as a way to settle African conflicts, it created it's own momentum which generated new patterns of violence. Indeed by the beginning of the colonial period, it appeared that issues of conflict had expanded more than what they used to be. In the early years

of colonialism, Bristish officers and agents, quite often restore order. But as they settled down, it was realized that force alone would not resolve conflicts, hence new strategies were adopted. To address these issues, the colonial authorities established courts, charged with aministering justice through indigenous laws and customs but under colonial suppervision. The guiding principle thus was the administration of justice based on laws and practices that were compatible with British principles of morality and justice and not 'repugnant to natural justice, equity and good conscience'. This paper looks at the workings of the native courts, to what extent did they resolve or prevent conflicts. It also queries received notions about the 'stability' of pre-colonial African institutions and the impact of colonialism on Africa. Contrary to the dominant historiography that colonial rule was essentially negative to African development the paper suggests that more attention should be given to considerations about time, place and peoples reactions towards an understanding of colonial impact. The Native Courts were veritable instrument of conflict resolution in colonial Ijesaland as elsewhere in Yorubaland. The Native Courts were the closest to the indigenous people in the judicial system set up for them by the colonial administration.[1]

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1. O. Adewoye, *The Judicial System in Southern Nigeria 1854 - 1954* (London: Longman, 1977), pp. 37-42 .

But it is important to note that the Native Court was not the only instrument of conflict resolution that was available during our period. It nevertheless, became ont only the most "Convenient" but also the most adaptive means of resolving conflict, which fitted and enhanced the policyof the colonial administration. Before the activities of the Native Courts in resolving conflictual issues are discussed we shall look briefly at other instruments of conflict resolution as they evolved. We have already noted how the century-long Yoruba wars induced the intervention/mediation of British and later Colonial Officers. It is within this framework that the various instruments that were used will be appreciated. The various instruments of conflict resolution can be classified under two broad headings. Formal and Informa.

Under the formal category we have: treaties, the use of force, the chieftaincy and district councils and the courts while under the informal category we have the organizational form of societies, clubs, private individuals, public mores to mention a few. Each of these categories shall be discussed one after the other based on their historical emergence.

Immediately after the imposition of the colonial order along the coastal states of Yorubaland, a program to occupy each of the interior states started earnestly. It was in this pursuit that the Ekiti and Ijesa were constituted into the North-Eastern District with headquarters in Ilesa. In 1899 the district was place under Major W. Reeve-Tucker, a Travellinjg Commissioner who was who exercised wide military, administrative and judicial powers for the purpose

of maintaining law and order.[2] As if to further enhance peace in the district on June 21, 1900, a federating Ekitiparapo council, which consisted of the rulers of the Ekiti and Ijesa territories was inaugurated.[3] The councile, created out of an informal military alliance of the neniteenth-century wars, deliberated on issues related to conflicts in the districts and established the best possible framework for maintaining peace among them.[4] The council's activities were, however, short-lived. Besides the frequency of incursion into the Ekiti territories by the Ilorin, the high-handedness of the ***Owa*** of Ilesa and his attempt to suppress other concilors, and impose suzerainty was soon to hamper the operation of council.[5]

Prior to the advent of the British in Ilesa, there existed a town council composed of the six leading chiefs. This was re-activated after the Ekitiparapo council had gone into oblivion. The Ilesa council delivered on issues affecting its people both at home and in the farm villages. It has already been noted earlier that this Council was reorganized and revitalized. It was partly for this reason that Sir William Macgregor, who became the Governor of Lagos in 1900, devised the Native Councils Ordinance of 1901.[6]

Right from the beginning of the administration of Yorubaland by the British, it was obvious that there would be the problem of administration, particularly that of adjudication of cases that were coming up among the people.[7] Prior to the advent of the British in Ilesa, compound heads, quarter chiefs and finally the Owa himself (being the final artbiter) were charged with settling conflicts. The more serious cases were brought before the ***Owa*** for hearing

and settlement.[8] But this process was soon to change with the advent of the Bristish in Ilesa. Though Colonial subjects, the ***Owa*** and his chiefs resisted the interference of the colonial administration in matters judicial, for this, to them, amounted to giving up a large part, certainly sometimes the major part of their meager incomes, already reduced by the presence of the British government. The use of the council for resolving conflicts was "a temporary one, calculated to take the chiefs only one stage onward in their administrative education". The administration had realized that "in a very few years something more elaborate will be necessary".[9] The elaborate institution that was been referred to was a formal court. But it is important to note that the colonial administration could not just establish a formal Court without necessarily creating a basis for it. The treaties that had been signed with the various Yoruba states had tended to guarantee their independence and for the colonial administration to establish any formalized court would be contravening the treaties.

Sir William Macgregor knew that the hold of the British on most Yoruba states was spurious and he reported in 1903 that the British "position at Ileas was weak one (and) the people are frequently encouraged to assert their independence of the British government". Again, the British government realized that courts in Lagos where the colonial administration had operated for about half century possessed no jurisdiction in practically majorYorubastates, such as Ibadan, Oyo, Ilesa, Ekiti, Ondo, Akure and Idanre. No jurisdiction "whatsoever has been established" in these

places by the British by force, "none has been ceded and no jurisdiction has grown up by use or custom". It was for this reason that it was necessary to sign the Judicial Agreement with the major Yoruba states in 1904.[10] This Judicial Agreement did not only helped the British to formalize their jurisdiction in Yorubaland, it also enabled the introduction of a European legal and judicial system in Yorubaland.[11]

By 1903, it was obvious that the machinery of justice had to be overhauled. Some factors necessitated the establishment of British Controlled Court in Ilesa as elsewhere in Southern Nigeria. These factors were political and economic. Politically, the Native Court that was established for resolving conflict situations was to be an instrument in the hands of the colonial administration for consolidating their hold on the protectorate.[12] The native courts were seen as being of immense value to the colonial perhaps because they rendered "material assistance" in the control of their gained territories. These Courts were charged with the responsibility for "all administration and executive works among the natives for the furtherance of

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2. National Archives, Ibadan (NAI) Ondo Prof. 7 and 8: Traveling commissioners diaries and journals.
3. Ekiti District Office (E.D.O), Reeve-Tucker: Traveling Commissioner's Travel Diary, 21 June 1900 cf. S. A. Akintoye, *Revolution and power politics in Yorubaland 1840-1893: Ibadan expansion and the rise of Ekitiparapo* (London: Longman, 1971, p. 221.
4. Akintoye, Revolution and power, p. 221.
5. NAI, CSO 12/19/5384: Report on the state of affairs at Ilesa.
6. NAI, CSO 1/3 - Despatches to the Secretary of State for the Colonies, London, from Lagos.

trade, education and agriculture".[13] It is against this background that the role of the Native Court as an instrument of conflict resolution during our period will be appreciated.

In 1905, the Ilesa Native Court was established in accordance with the provision of the Native Court Ordinance, 1900.[14] The members of the Ilesa Native Courts were the ***Owa*** and his principal chiefd: the ***Obanla***, the ***Risawe*** and the ***Ogboni*** of Ilesa. There were the three rulers of principal Ijesa towns: the ***Ogboni*** of Ijebu-Jesa, Ogboni of Ipole and ***Ogboni*** of Ibokun on the Owa's Appeal Court. The Ilesa Native Court originally handled all cases; criminal, civil and land cases. By 1914, when the Native Courts Ordinance was amended, the Native Courts were divided into sessions and heard cases separately; civil and criminal in a court in two sessions while land cases were heard in another courts.[15]

How did the Native Court operate? The procedure of the court was that cases emanated through the service of civil summons on a defendant or accused persons subsequent to a suit at court by a plaintiff. An ***akoda*** (late, A. N. police) served summons. When a plaintiff fails to appear in court, the case was to be struck out, unless notice was given that an adjournment was required and necessary fees paid. At the end of the day's hearing, any case remaining on the case list was adjourned and the dates of hearing of

7. NAI, CSO 1/3/7: Macgregor to the Secretary of State for the Colonies, 15 December 1903.
8. Interview with Chief Oladode Phillips, *Aduloju* II, the *Ogboni* of Ilesa on 29/1/99.
9. NAI, CSO 1/3/7: Macgregor to the Secretary of State for the Colonies, 15 December 1903.

such adjournment were announced in the open court.[16]

The cases that were coming into the Native Courts can be grouped into two categories, namely, civil and criminal. Under civil cases, we will need to bring out some of the cases in the group to "stand on their own' as a group because of the role they played in social change. These cases are matrimonial and land disputes. In 1945 Ali Babalola sued Oloja Isireyun claiming the ownership of a farmland at Isireyun village near Ilesa. Ali Babalola' father was the previous *Oloja* of Isireyun and for this reason had a farmland attached to his office, which his son inherited from him. Cocoa and kolanut was planted on it. But when his father died, Ali refused to take up the *Oloja* Isireyun chieftaincy title, which another man accepted and the latter claimed the said farmland as a chieftainy land.[17] At the lands session of the Ilesa Native Court, the judge, chief Latunji, the ogboni of Ilesa ruled that the land was an oficial property of the *Oloja* Isireyun, which belong to Ali Babalola's family but since he refused the title, the right to the land must go to the 'new' *Oloja* of Isireyun. However, since Ali Babalola had permanent crops like kolanut and cocoa on the farmland, the court ordered that he should be alowed to harvest his crops while he, Babalola had to pay rents on the crops to the 'new' *Oloja* of Isireyun. In other words, he was treated as a tenant farming on a chieftaincy property.

10. O. Adewoye, "The Judicial Agreement in Yorubaland, 1904-1908, *Journal of African History*, 7, 4, 1971, pp. 607-27.
11. Yorubaland Jurisdiction Ordinance, No. 17, 1904 in *Laws of the Colony of Southern Nigeria 1908, p. 260.*

1946, a case between 'Fagbulu's family of Ilesa and Ajakaye of Ilesa came before the Native Court.[18] Both claimed ownership of a farmland at Orogoji on Iwara road near Ilesa. In the course of the courts's investigation, it became evident that 'Ajakaye was not a native of Ilesa but a slave of Ogedengbein 1910. Ajakaye was only a tenant under Fagbulu and paid tributes to him for farming on his land. In 1916 Ajakaye went to the native court, banking on the influence of his deceased but still popular overlord, Ogbedengbe to press home his ownership of the said land. When he could not do this he rescinded his claim over the land. Twenty years later, chief *Obaodo* instigated him to take a fresh action over the land with a promis that he, Obaodo would help in the case and that if he succeeded, they will share the farmland between them.[19] It was, however, clear that Ajakaye was making a wrong and deceitful claim, his effrontery motivated by Obaodo's membership of the Native court. The fortitude of other members of the court helped in bringing out the correct facts of the case. It is significant to note that this case evinced the importance that was placed on land, particularly farmland that could be used to cultivate economic trees such as cocoa, rubber and other products. Again, this case also shows us how

12. O. Ikime, *Niger Delta Rivalry: Itsekiri - Urhobo Relations and the European Presence, 1884-1936* London: Longman 1969, p. 145. See also O. Adewoye, *The Judicial System in Southern Nigeria 1854 - 1954,* London: Longman, 1977, p. 40.
13. O. Adewoye, *The Judicial System in Southern Nigeria* ... p. 40.
14. NAI, Ile Div 1/1/827 Native Courts, Establishment. See also Oyo Prof. 1/3274, Vols. 1, II and III.

attempts were made to use positions and wealth to dispossess people of their property in the court. Had the members of the Native Court been lapsed in their duties, Ajakaye would have been upheld as the owner of the farmland wrongfull. This was a typical example of how the court was used by the rich and the privileged in the society against the poor.

A third case, between David Jegede and Chief David Ibidapo, the *Lemondu* of Ilesa came before the Ilesa native court presided over by chief Olaitan, the *Obaodo* in 1947.[20] Jegede wanted title to all portions of land situated at Okesa Street, 'which is occupied by the CMS Bookshop' and the rent already received by chief Ibidapo from the CMS Bookshop who occupied the said land. Ibidapo on the other hand claimed ownership having inherited the land from his father a previous *Lemondu*, whose personal property the said land in dispute was. The value of the land in dispute was approximately £100. According to Ibidapo, it was the king of Ilesa, Owa Aromolaran I who granted this land to the CMS through his father and predecessor in office, chief Lemondu Ajayi. The transfer was approved by Aromolaran's successor, Ajimoko II. In spite of evidences that Aromolaran and Lemondu Ajayi used their chiefly power to seize the land from Jegede's father in return for huge rent paid by the CMS, the Native Court decided the case in Ibidapo's favor. The judge, chief S. Latunji declared:

I still maintain my previous judgment in this case

15. NAI, Ile Div 1/1/353: Native Courts, Reorganisation.
16. NAI, Min. Jus (W) 1/1/260, Vol. 1: Native Courts Institutions.
17. NAI, Ile Div 1/1/1461 - *Ali Babalola vs. Oloja Isireyun*

according to the decision of the *Owa* and Ijesa chiefs, that *Lemondu* David Ibidapo is the owner of the disputed land.

The plaintiff, David Jegede disagreed with the judgment, and appealed to the Owa's Native Court of Appeal. In the course of the appeal it was proved that the plaintiff, was the rightful owner of the said land thereby set aside the judgment at the lower court. Owa Ajimoko II who presided over the Native Court of Appeal declared:

> *in this case, we now see clearly that the land is not a chieftaincy land as we had thought it, therefore this court shall decide that, the rent collected on the land from the CMS Bookshop shall henceforth have to be divided into two equal parts between the plaintiff and the defendants.*

Both plaintiff and defendant, for different reasons expressed dissatisfaction with the judgment, and wish to appeal. Admittedly the plaintiff would not want to share the proceeds from his property with the defendant while the latter was dissatisfied for he thought the Owa would have used his chiefly prerogative to favor him, another chief. For this reason David Jegede immediately sent a petition to the Assistant District Officer for Ilesa Divisional.

When the case came before the A. D. O the judgment of the Native Court of Appeal was upheld. But the A. D. O. added that 'the Defendant/Respondent, David Ibidapo, must keep all monies received as rent up to and including March 31st 1948 when judgment was delivered, while the

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18. NAI, Ile Div 1/1/1462: *Fagbulu of Ilesa vs. Ajakaiye of Ilesa.*
19. *Ibid*

Plaintiff/Appellant should receive full rent with effect from April 1st 1948'. In addition, the D. O. ordered that the Plaintiff/Appellant should enter into an agreement with the *Owa*-in-council on the lines of the agreement drawn up between the *Owa*-in-council and the Defendant/Respondent. After the expiration of the lease in 1956, a renewal could be contemplated and the plaintiff - Appellant was to become the leaser in the place of the Native Authority.[21] This was a case of direct conflict of evidence. The Owa's previous recognition of the land as chieftaincy land stood in contrast with his later acceptance of the land as private property. This case was significant in that it showed the importance that was placed on land. Secondly, it showed clearly the delicate lines walked by all the parties involved. The plaintiff believed this was a new era when individual rights should not be trampled upon and that courts and the law should be no respecter of anyone, regardless of status. To the courts, however, it was an era of embivalence between protecting private and chiefly properties but in a way that a chief, and the chiefly institution would not be humiliated.

During the colonial regime land sales was a principal source of wealth little wonder that several conflicts resulted from there. Land dsiputes between individuals particularly between the chiefs and the town's people, became a major source of conflict. From the point of view of the colonial administration, unending land disputes werein themselves a factor in political instability. Perhaps for this reason the A. D. O. could not but express his fears about the rate with

20. N \I, Ile Div 1/1, 1843 - David Jegede vs. Chief David Ibidapo

which land cases were coming into the Native Courtsin this areas: "Land cases were almost incessant in the courts in this division and in most cases it was necessary to inspect the land in dispute".[22] This created new conflicts in the process of resolving old ones.

Besides issues pertaining to land, there were other civil cases such as matrimony that came before the Native Court for resolution. The advent of colonial administration altered the traditional practice regarding matrimony. Again, the introduction of money economy and properity that resulted from the introduction of cocoa as an economic tree crop helped to facilitate dissolution of marriages, as there was enough money to "seduce" a "new" wife.[23] However, it is sometimes assumed that the reason why so many marriages were unstable during the period of our study was a result of a general laxity of morals on the part of women. This perception of the matter is superficial. The problem was not so much one of morals as of social change, reflected in the decline of authority of the husband. Changes in the institution could not be divorced from other factors of change especially the abolition of slavery, western education. Christianity, improved transport systems coupled with the Bristish predilection for individualism. Education widened the horizon of individuals thereby creating alternative choices from which they could select. Christianity, apart from its educational value, also placed emphasis on monogamy. It undermined the African extended family system and defined marriage as a union between a man and his wife. Lastly, improved transport systems enhanced mobility, encouraged

the growth of new towns and expanded the ethnic composition of existing ones. it also transformed the economic structure thus creating wealth and new tasted and aspirations.

The indigenous marriage system in Ilesa involved a union between families.[24] A young girl often did not have a say in whether and whom she wold marry. Thus, it was the parents or kin who arranged marriage partners for their wards by paying stipulated bridal prices. Since parents were more willing to give their daughters to successful men, whom they could trust, the older, the well to do, and the great men of the country had a near monopoly of wives while the young generation of men had to be contented to live in concubinage with the wives under the sanction of the lawful husbands. In Ondo, to obtain this license, the young men paid a fee (or fine) at first and afterwards remained in the house and rendered services as a sort of menservants. children born in such a way during the lifetime of the husband were naturally his - the natural fathers could only call and treat them as their brothers or nephews.[25] Th right to refuse a man was not recognized in the pre-British era. If any girl refused to marry according to her parents' wishes, she was beaten and forced to her husband's house. Girls who appeared to be more difficult were beaten, chained for days and if she continued to be unyielding, her legs were tied to a bambo pole and she was carried to her husband's house. Inherent in the indigenous marriage system was not in live with. Many of these 'wives' were indeed slave women

21. *Ibid*

who were force to marry their captors or masters. According to a contemporary "the fair young women are added to the harens of the great (men), and young men save themselves the expenses of a dowry by making wives of any that come into their hands".[26] More research is necessary to understand the full ramifications of this aspect of slavery. For now we know that female slaves were taken as wives of inferior rank, cheaper to marry because the expresses and labor involved in marrying free women were not paid. Similarly, a slave wife could be more easily controlled culturally and economically since the husband commanded a larger percentage of a slave wife's production. Indeed as late as 1910 a group of Yoruba culture, agreed that even "where ... not family would give their daughterin marriage to a man because he is notoriously wicked and cruel, has no family and his descent could not be traced; where it is known that the man or members of his family suffer from such disease as leprosy or insanity and ... the man or his family was guilty of some heinous crime, such as murder or suicide" he would still get a slave woman to buy for wife".[27]

A strong link between slavery and gender relations during this period can be seen in the transition from the Atlantic slave trade to the so called 'legitimate trade' in agricultural and manufactured products. Female slaves were

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22. NAI, Ile Div 1/1 1932: Native Courst, General; A.D.O. to the Resident, Oyo Province, 30th June 1949.
23. N.A. Fadipe, *The Sociology of the Yoruba,* Ibadan: Ibadan University Press, 1970, p. 93.

necessary for the production of pam oil and kernel, two of the major items in the new trade. This issue has been addressed by Francine Shields who demonstrates the centrality of women to oil production.[28]

As soon as native courts were established, such unhappy women flocked to the courts for divorce. The most affected were the chiefs who had several wives sometimes numbering close to 600.[29] No one had the right to cohabit with any of the women in the harem. Offenders were destined to die, ruined with debt, expelled from the town, his family sold as slaves and the woman made to to very worst tasks in and went around in chains. With this law many of the women suffered in silence. A spectacular case went to court in 1931. One Moses Adedeji cohabited with Tolayo, one of the 25 wives of the owa in late 1930. The native court presided over by cronies of the Owa, who in all probability had similar number of wives, in consultation with the district officer jailed Moses for two years. In the words of the officer "they (Owa and chiefs) wished a more severe sentence to be given and it was with the greatest difficulty that they agreed with the final award".[30] In the opinion of the chiefs, Moses had a worse case as the woman he slept with was a mother nursing a two-year old son, when only a child of three could be weaned. So his case was that of adultery and attempted mother. As in the land

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24. Samuel Johnson, *History of the Yorubas: From the earliest times to the beginning of the British protectorate* (Lagos: CSS Bookshops, 1976 (1921), 113-117; A.G. Hopkins, "A report on the Yoruba", *Journal of the Historical Society of Nigeria,* Vol. V., No. 1 Dec. 1969, 81.

cases, the Native Court tried to wriggle out of a quagmire. The offence was regarded as a "deliberate insult to the owa and all the people of Ilesa, and one, which is likely to lower the respect in which the owa is held and upon which his authority depends".[31] At the same time the Resident officer opined that:

> *the privileged classes who rejoice I the possession of a number of wives are apt to make the most of an offence such as this ... and however government may symphastise with the desire to uphold native custom and maintain the same drastic sanctions which in the past were the most effective means of keeping inviolate the wives of polygamous chiefs. If other property rights have been made secure, property rights in a plurality of wives have become less so ...*[32]

Embedded in matrimonial cases were disputes over dowries and other marriage paments. Some parents were in the habit of receiving such payments from more than one man and also increasing the amount to be paid when there were many suitors for their daughters. The newspapers became the springboard on which different shades of opinion were expressed about the spate of dispute that were arising from the trouble over increase in dowry and the practice of 'trading on girls'. The *West African Vanguard* was apt in its editorial comment of May 28, 1952:

> *there is a boom in the dowry market in which mothers are making money on their daughters by*

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25. National Archives, Ibadan (NAI), CMS (Y) 2/2/4: A Statement of the peculiar problems, which impede the progress of the infant church at Ode Ondo, February 14, 1891 (by Bishop Charles Phillips).
26. S. Johnson, *History*, 324.

giving them various suitors and collecting money from all and sundry. The fathers, for their part sit calmly aside and demand high dowry prices as if the girls are marketable commodities that must be sold for the near £100 pounds they now claim as dowry."[33]

A case between Olufunmilayo Deborah and Samuel Ogundoro is a testimony to the above editorial. The paintiff , Deborah renounced the marriage contract entered into on her behalf by her father, in respect of Samuel Ogundoro. While the case was delayed by the matrimonial sessionof the Ilesa Native Court, she sent a petition to the Native Court President demanding dissolution of the arrangement made by her father, and a willingness to pay back 15 in favor of the purported husband. This was because she "does not wish her father to force her to marry whom she not pleased to marry".[34] What was not clear in this case was whether Deborah had another man who could pay not only a higher dowry but also give to her as much as she would want before accepting to be married. The court obliged her and she dissolved her union with Samuel Ogundoro. This was the situation with divorce during this period. Women divorced their husbands with impurity.

In another matrimonial case: ***A. A. Obara Vs. Florence Ebun*** in 1955, it happened that due to some irregularities in the relationship, Ebun served her husband divorce

27. Hopkins, "A Report . . .", 82
28. Francine Shields, "Palm Oil and Power: Women in the era of economic and social transition in 19th century Yorubaland (South-western Nigeria)", Ph. D, Stirling, 1997.
29. NAI, Oyo Prof. 1.1324, volume 1:Ilesha Chiefs to Lieutenant Gov, 17 March 1933.

summon.[35] The Ilesa native court, after the hearing the court granted divorce to Ebun and was asked to pay back the dowry paid on her by her husband, Obara, which she did. But some days later Obara sued Ebun to the same court, claiming that she owed him a debt of £55. Obara claimed that his witness was residing in Lagos. The case was adjourned to allow him invite his witness but the witness never came. In court, he complained that his witness could not come from Lagos because of transport fare. When Obara did not appear in court after about two adjournments the court struck out his case for want of evidence.[36] Significantly, it was clear that A. A. Obara never wanted Florence Ebun to divorce him and he felt what he could do to frustrate her divorce hid was to lie that she owed him 55 pounds, creating more conflict between them. The issue of divorce was a prediminant source of conflict in Ilesa as elsewhere in southwestern Nigeria at this time.[37]

In 1957, Chief Ademokoya, the **Obaodo** of Ilesa who had about eleven wives refused the divorce summon from one them, Adejoke Alake.[38] Alake had summoned her husband to the life native court. Her preference for life was to prevent the interference of her husband in the hearing of the case in Ilesa. Chief Ademokoya threatened to intitute a separate action against his wife in an Ilesa native court charging her with theft of the sum of 50 and a gold chain.

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30. NAI, 1/1324, vol. 1: J.A. Mackenzie, D.O. to Resident, Oyo Prof., 22 January1993.
31. NAI, Oyo Prof. 1.1324 vol. 1: Ward Price, Resident of Oyo Province to Secretary Southern Profs, 3 February 1993.
32. NAI, Oyo Prof. 1/1324, vol. 1: Ward Price to District Officer, Ilesha, 28 March 1933.

on the 28 February 1957, Adegoke Alake employed the service of a lawyer, D. E. Olagbaju of ile-Ife, to write a petition to the Divisional Adviser, Ilesa Division, about the attitude of Chief Ademokoya, who refused judgment of on Ife Native Court that granted the divorce.[39] A copy of this petition was sent to Chief Ademokoya himself. The Divisional Adviser also wrote, to warn him about his attitutde and that the judgment of the Ife Native Cout, which granted her divorce be upheld. The significant aspect of this case was that chief Ademokoya wanted to hold on to his wife despite the fact that she had already indicated her desire to be separated. However, Chief Ademokoya would have unjstly put the woman in a lot of trouble if not for her wisdom of employing the service of a lawyer who helped her to forward a petition to the Divisional Adviser, who as a British Office, placed emphasis on the rights of the individual and was wont to grant divorce to women much more easily. Consequently, the rate of divorce cases that were brought to the courts was differently interpreted, quite often along gender and generaltional lines. To the men and the elderly it was a serious social problem inimical to societal peace but to women and the young, this was a liberating phenomenon that should bne encouraged.

Matrimonial and civil cases, which were a combination of debt and land disputes increased greatly as from 1920 with considerable decrease in 1923.[40] The decrease that was noticeable in civil cases in 1923 was due to slump in

33. *West Africa Vanguard,* 28 May 1952.
34. West African Vanguard, 28 May 1952.

trade.[41] 1924 was considerably different, it evinced an increase up to 1926, after which there was a drastic down turn of civil cases again in 1927.

Another significant factor that was helping to reduce the rate of matrimonial cases could perhaps be the effect of the Age of Marriage Act, 1929, which stipulated that no one under the age of sixteen years could contract a valid marriage.[42] This measure of government helped to curb the practice of marrying under-aged girls. On the other hand criminal cases from 1920 showed a steady increase up to 1929 with a little decrease in 1930. We have already mentioned the promulgation of some rules by the native courts and their implementation by the Cative Courts too. The violation of these rules and regulations were reckoned as criminal, hence the tended to incriminal actions.

To what extent were the Native Courts in Ilesa successfully resolving conflict? The Native Courst in Ilesa went some way some way in resolving conflict. The statistics of cases earlier referred to is indicative of the fact that cases of conflict among the people were freely comming to the Native Courts. This is an indication that the people accepted the institution of the Native Court as an instrument of conflict resolution. The people patronized the Native Court willingly, particularly after 1914, with the expectation that it would give to them justice. Whatever may be the success of the Native Court in resolving conflict in Ilesa, as

35. Ibid
36. Ibid
37. West African Vanguard, 28 May 1952.

elsewhere in Southern Nigeria, it is worth mentioning that the Native Court's operation was hampered a great deal in resolving conflicts that were brought before it.

It is remarkable that the Native Courts ordinance, 1914, provided for the keeping of proper records of the proceeding in the Native Courts in the English language and to maintain order in the court, necessitated the positions of Court clerk and the Court messenger. It cannot be over-emphasized how the Court clerk and Court messenger prevented justice and extorted litigations on the pretext of helping them.[43] Secondly, the illeteracy of the chiefs who served on the benches of the Native Courts as members and Judges enhanced the venality of the Court clerks and Court messengers. This is not to say that the chief themselves were not corrupt. The structure of the Ntive Courts' system opened up opportunity for the venality and corruption of the chiefs.[44]

The colonial administration was not unaware of the corruption that was prevalent in the Native Courts. For this reason an official report in 1924 commented thus: "It is not possible to create a class of people possessing judicial minds in a few years".[45] The rate corruption and miscarriage of justice left much to be desired. In spite of the fact that strenuous efforts were made to raise the standard of justice, the courts were proved "to sell justice to the highest bidder or to favorites".[46] Too many cases were adjourned for decisions after the evidences had been recorded and many

38. NAI, Ile Div 1/2/ 973 Vol. 1 Matrimony Cases, Ilesa
39. *Ibid.*

persons were seen privately in the houses of Court members and clerks before, during and after the hearing, but before judgment was delivered.[47]

Again, the fees that were paid to the court particularly when the case involved was on land, the plaintiff would be required to pay not only for the survey of the land in question but also provide transport fare of court menbers that were to inspect the land in quention. This situation was putting off many prospective plaintiffs who were poor and could not afford such exorbitant fees.[48] Moreover, the role of letter-writers who were helping the people to prepare letters or petitions either to the native courts or to the Administrative Officers went some way some way too, in hindering the effectiveness of the Native Courts. Letter-writers were wont to "bleed" the people of various charges for their services. It would be recalled that the Native Court Ordinance had prevented the interference of lawyers in the Native Courts but there was a clause that representation could be made for litigants at the Native Courts by their "relative, servant or master" and friends who shall give satisfactory proof that they have authority in that behalf to appear for such litigants".[49] It was this clause that letter-writers took advantage of and were extorting their clients.

What effort was made by the government "to raise the standard of justice" in the Native Courts? The judicial reform of 1933 tended to effect tangible innovations in the workings

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40. See Table
41. NAI, CSO 26/09723, Oyo Province, Annual Report, 1922
42. NAI, Ile Div 1/1/1508/8 Marriage Rules: Ilesa

of the Native Courts generally. Though the general organization of the Native Courts did not change, it introduced two main innovations. The purview of the Native Courts jurisdiction was extended. The existing grades of Native Courts from A, B, C, and D was to remain and each of this grade of Native Court had few adjustment in their jurisdiction. The second major change was the review system of appeals from the courts.

Under the Native Court Ordinance, 1933, the Native Court's Instruction was amended to enhance the workability of the new ordinance. The procedure followed was that when a party to a case was not satisfied with the decision or judgment of a Native Court, he or she may either appeal to the Native Court of Appeal or register the case for review.[50] A dissatisfied litgant was to be informed by the Court after its decisionhad been read and recorded in the cause book underneath the judgment, that the dissatisfied party had been so informed.[51]

However, if the dissatisfied party wished to appeal he must within thirty days of the date of the Native Court's judgment, pay the appeal fee to the Native Court Clerck in which judgment was given. A receipt was to be given for the appeal fee. As soon as the appeal fee was paid it was the duty ot the court clerck to enter below the judgment in the casebook in red ink: "Appeal lodged, fee paid on" (date inserted) and he appended his signiture. The appellant was also to pay cost of transmitting his case file to the Native

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43. NAI, Ile Div 1/1/1932: Native Courts, General.
44. *Ibid.*

Court of Appeal.[52] Again, if one of the parties in the Native Court of Appeal was dissatisfied with the judgment, he was to be advice at once that he might either have the case registered for review by the D. O. or appeal to the D. O.'s Court within thirty days of the judgment of the native court of Appeal.[53]

The workability of the channel of appeal was below expectation and ws not providing successful end to litigation. The system of appeal was very complicated. a case could be heard by at least two native courts and then by three government officers. Hence, cases dragged on for months or even years and some principal parties or witness to the case might have either been dead or untraceable. There was also a lack of consistency in determining the channel of appeal. The judgment of a final Native Court of Appeal was almost always not amicably settling cases brought before it, contrary to the provision of section 32 of the Native Court Ordinance of 1933, which referred to the finality of appeals.[54]

The second channel of redress apart was review. In practice, reviews were conducted when the Administrative Officers visited courts and in most cases these visits were made on fixed days so that every party to any case ws informed when to attend. At the court, during the review, both parties to a case must be present although the witnesses were not often required unless their attendance was

45. Adewoye, *The Judicial System in Southern Nigeria,* p.179.
46. NAI, Ile Div. 1/2/353: Native Courts Reorganisation.
47. Adewoye, *The Judicial System in Southern Nigeria,* p.179.
48. NAI, Ile Div. 1/2/353: Native Court Reorganisation.

imperative to the elucidation of material point. Adjournment was frequent in such cases and the decision of the case under review was often delayed.[55]

The procedure of review varied considerably from that of appeal and the difference was in the more formal record required in appeal. The procedure of review was for the Administrative Officer to read through the copy of proceedings and enquire from the dissatisfied party, his grounds for asking a review. if the grounds appeared that the Court's judgment was reasonable on the evidence produced before it and that no undue influence had been brought to bear on it, a review was usually granted. Review was more popular among the people than appeal.[56] A review was a quick, cheap and easy method of obtaining "relief", no matter how ineffective. But appeal entailed the payment of fees; produce of copies of proceedin of cases and the hearing by the D. O. or Resident was considerably more formal and occupied more time than a review.

Review had two advantages over appeal. From the point of view of parties involved in a case, they were more likely to obtain the justice, which they undestood, and desire. Secondly, from the point of view of the courts, reviews had greater educational values, being caried out in the presence of the court members who could be consulted on matters of custom and to whom errors in procedure could be explained. Hence, review provided on admirable link

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49. Native Courts Instructions
50. NAI, Oyo Prof. 2/2/1269, Vol. IV: New Native Courts Ordinance, 1933. See also Ile Div 1/1, 827 New Native Courts.
51. *Ibid.*

between Administrative Officers and the chiefs exercising judicial powers. In spite of this, reviews were not producing the expected result, that of raising "the standard of justice".

52. *Ibid*
53. *Ibid*