

British Colonial Courts and its Judicial Reforms in Ibibioland, 1885- 1935

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ABSTRACT

From the earliest time, Ibibio society was not without her own rules and mores which by customs and usage, formed the basic laws that governed them. The Ibibio jurisprudence before the incursion of British modeled courts was governed by natural law. The British courts, predicated on economic benefits was a deviation from the Ibibio practice. The traditional modes of law making among the Ibibio before the coming of the British courts and the philosophy behind such law was distorted by the introduction of the British court system starting with the informal Courts of Equity. Using primary sources such as oral interviews/archival evidence and secondary sources, this work adopts historical narratives methodology. It sought to examine the gaps that existed and the challenges the British established courts encountered in dispute settlement standards, owing to her deference to the Ibibio traditional dispute mechanism. The work concludes that the establishment of British colonial court system in Ibibio land brought about a transition from the reservation of social equilibrium by the community as was practiced before the introduction of the court system, to the impersonal justice of the courts, which unsettled the indigenous jurisprudential balance. These gaps and challenges eventually necessitated the judicial reforms that the British court system experienced.

INTRODUCTION

Before the advent of British colonial administration Ibibioland was a non-centralised society where laws and judicial decisions were arrived at collectively. There was no established form of centralised authority or government, a separate body or institution that made laws. The absence of a centralized system of government among the people in the

pre-colonial period did not mean that the people were in a state of anarchy. Dispute settlement was an integral part of Ibibio village democracy. As obtained in most African societies, there were bound to be conflicts among individuals and communities but there also existed traditional methods by which conflicts resolved to ensure that peace and order were achieved and maintained in the society. Once the laws

were made in the community, it was important to implement such laws. In other words, the efficacy of the laws lie in their implementation.

Justice was the cardinal pillar of Ibibio judicial system. The Ibibio had a very strong sense of justice which was evident in many Ibibio cultural ethos and pathos. Oral tradition, present in incantations, folklores and tales represented the main purveyors of the value system. The Ibibio indigenous dispute jurisprudence and settlement was practised in land matters, theft, inheritance issues, socio-communal matters, interpersonal relationship and other matters relating to the economy. Different institutions used different mechanisms to adjudicate and settle different kinds of disputes. The Ibibio indigenous dispute settlement mechanisms and judicial instruments were among the strongest means of social control employed in South-East Nigeria. "This was prefixed on the belief that if human attempts in getting at the truth failed, at least the unseen forces would not err"¹ These Ibibio traditional justice system entrenched the principles of fair hearing in case disposal processes. Parties to a dispute were allowed to present their cases and call a witness or witnesses where the need arose. Decisions on matters were taken openly and in the presence of the parties, members of their family, village or community. Truth remained the watchword in traditional jurisprudence in Ibibioland. Both the disputants and the arbitrators were expected to be truthful.

One of the salient means of practising the Ibibio indigenous judicial system was represented in the area of criminal matters. According to Oraegbunam, the Ibibio and the Igbo recognized two classes of offences: those that carry capital punishment and those that do not. The first set was described as abomination, and consisted of acts that were against divine laws. These range from murder to witchcraft, incest and adultery. The second class consisted of offences of such other forms as stealing, failure to join community service and disobedience to community mores and rules.² The retributive and penal justice was demonstrated in the punishment meted to the offenders which included death penalty in extreme cases, ostracism, banishment, fines, compensation. But above all, this system was premised on the important value of reconciliation and peacemaking.³

As mentioned earlier, Ibibioland was a well ordered society in the period before the advent of the European intrusion and the subsequent adoption of European political jurisprudence, through the establishment of the colonial courts.

Origin of Laws in Ibibioland before the Introduction of British Courts

In Ibibioland, like in every other society, political organisation implies all practices and activities involved in the administrative management of the society. This include setting out laws for members and how such laws were enforced. Akpan states that political organization also denotes the nature of power and authority relations in human society.⁴ It has been established that Ibibioland was a segmentary society and the laws and judicial decisions were arrived at collectively since there was no form of established authority or a separate institution to make laws.

According to Udo, the organisation of Ibibio society was based on social organisation and consisted of six divisions, augmented by clubs; *idip* (family), *ufok* (sub-division of an extended family), *ekpuk* (lineage), *idung* (village), *oduk* (group of villages) and *ikpaisong* (clan), which was the highest level.⁵ Each village was autonomous and independent. No village legislated for the other and the village was the only political entity which actively affected practically the daily lives of the citizens. Each village was lineage based and the lineage consisted of a number of families. Both the lineage head and heads of families were members of the village council responsible for making all village legislations. The village council made laws to govern all aspects of village life. Traditionally, there were 'courts' of varying levels, making pronouncements on specific cases and thereby making laws. Since the concern of the traditional rulers was the welfare of the community as a whole, it seems natural that they drew no distinction between executive and judicial functions.⁶ In most cases, the village council was the same for both judicial and administrative purposes. Laws were made for the protection of life and property, for safe guarding the source of water supply; the protection of the decency of women as well as the cleanliness of village paths and squares.

For instance, at the village level, *Obong Idung* (also

¹ O. Adewoye, *The Judicial System in Southern Nigeria, 1854 – 1954: Law and Justice in A Dependency*, (London: Longman Group Ltd., 1977), p. 8.

² I. K. E. Oraegbunam "The Principles and Practice in Traditional Igbo Jurisprudence, in a *New Journal of African Studies* (ND), p. 53

³ *Ibid*, p. 53

⁴ U. J. Akpan, *Akwa Ibom and Her Neighbours: A Study of Regional Diplomacy Since the Pre-colonial Period*, (Uyo: Heritage Preservation Foundation, 2018), p. 32.

⁵ Edet A. Udo, *Who are the Ibibio?* (Onitsha: Africana FEP Publishers Ltd. 1983), p. 119

⁶ U. Udoma, *History and the Law of the Constitution of Nigeria*, (Malthouse Press Limited, Lagos, 1994), p. 6

referred to as Obong Obio in some villages), was the head of the village and presided over the meeting of the village council. In this role, he did not take the executive or judicial decisions on matters that were brought before him, but rather, he consulted a lot in order to give justice to all. This office rotated among the *Ekpuk* that made up the village. Politically, the *Obong Idung* presided over the village council meeting or *Esop Idung* and was ably assisted by some chiefs of lower rank in charge of specific spheres of the village needs. When the *Obong Idung* was selected and coronated, he was to run the affairs of the community with the assistance from established institutions and the village council. The village council exercised Legislative, Executive and Judicial authorities. It took decisions on matters brought before it, adjudicate on both civil and criminal cases, made new laws and interpreted old ones, as such all adult men and women in the community were members.⁷

Village laws were not made arbitrarily, and steps were taken to ensure that the wishes of the people were ascertained. This often took place in a meeting of the Lineage Assembly, held on a fixed day of the week and on a regular basis. It was during such assemblies that proposed village legislations were placed for discussion and every member of the lineage had the opportunity of expressing his opinion on such impending legislation. Laws in the traditional Ibibio society were rigidly enforced. There was no specific judicial body which of necessity, the injured must refer a matter, rather the act of initiating judicial proceedings depended on the particular individual. When the law was broken and the culprit known or suspected, the injured party had a number of options open to him. He could report the matter to his lineage head or to the village head or to the person he believed was capable of handling the matter.⁸

The age grade was a very important institution in communities where they existed, the groups were made of the population of same age divided into groups for the discharge of community service. Besides the age grades, there were other very important groups in the community that provided leadership. These according to Gailey were the titled societies. He mentions four different societies for men and one prominent secret society for women. These were the *Ekoong*, *Ekpo*, *Idiong* and *Ekpe* societies.⁹ There were significant differences in the philosophical basis and ritual

forms of each of these societies; but overall, they all performed necessary functions for the community. Each of the organization exercised strict control over the community in which they operated. The leader of the secret society needed not to be the village head, although the village head was always a member of the society. In areas where the jurisdiction of the secret societies were uppermost, the village head was simply a servant of the societies.¹⁰

Advent of British Courts in Ibibioland

European interactions with Ibibioland began at the onset of the Atlantic slave trade in early 16th century, when the European slave traders visited the coastal areas of West Africa including the coast of Ibibioland at Ikot Abasi and Itu to buy or capture slaves for shipment to the Americas. This practice continued until the British parliament declared the slave trade abolished in 1807.¹¹ When the British parliament declared the slave trade abolished, they had to adopt a number of measures, which included signing of treaties with the slave trading nations of Europe and the Americas and the African rulers, naval patrol of the west coast of Africa and the establishment of an international court known as the Court of Mixed Commission in Freetown in Sierra Leone for the trial of captive slavers to effect a permanent end to the slave trade. Since the headquarters of the Court of Mixed Commission was in far away Freetown, it was difficult for it to adjudicate on cases of slaves in the Bight of Benin and Bight of Biafra.¹² When Britain acquired the Spanish Island of Fernando Po from Spain in 1827 for use as a naval base for the suppression of slave trading activities, the headquarters of the Court of Mixed Commission was transferred from Freetown to Fernando Po which fell within the area close to Ibibio land.

The period between 1850 and 1899 when the slave trade was supplanted by the 'staple' trade witnessed the advent of British colonial rule in Ibibio area. The area came under British administration when the first British Consul, John Beecroft, was appointed in 1849 to regulate trade and protect British interests within the Bight of Benin and Bight of Biafra. In the wake of this establishment of the British consulate, there began to develop informal courts of equity at important trading centres. According to Noah, these courts were the outpost of the British Empire and represented the cheapest and the most effective ways to plant the British flag wherever it became possible to do so after military conquest.

⁷ Ekong Ekong. *Sociology of the Ibibio: A Study of Social Organization and Change*. (Calabar: Scholar Press Ltd, 1983), p. 136.

⁸ Monday E. Noah, *Proceedings of the Ibibio Union 1928-1937* (Uyo: Modern Business Press Ltd. 1988), p. 21.

⁹ H. A. Gailey, *The Road to Aba: A Study of British Administrative policy in Eastern Nigeria*, (London: University

of London Press 1970), p. 16

¹⁰ *Ibid*, p. 17

¹¹ M. E. Noah "The Establishment of British Rule Among the Ibibio (The Judiciary)", published in *Nigeria Magazine*, No. 149, (1984), p. 26

¹² U. Udoma, *History and the Law of the Constitution of Nigeria*, (Malthouse Press Limited, Lagos, 1994), p. 2.

Adewoye agrees that the earliest known English styled court in southern Nigeria was the so called Court of Equity that was set up in the Niger Delta states. To him, the courts sprang out of necessity to administer some rough form of justice between the European supercargoes and the African traders.¹³

Also, Bassey aligns with other researchers that international trade was carried out in Ibibioland without the English law, as the Europeans made use of indigenous judicial institutions to settle disputes¹⁴. He states further that rudimentary English law was introduced in the Niger Coast in 1872 by virtue of the Order-in-Council of that year, which terminated the membership of all African kings and chiefs or middlemen and traders in the Court of Equity. From then on, the British took over all the judicial, legal and political powers and authorities of the natural rulers and institutions.

On 5th June 1885, Britain declared Protectorate over what had become the Oil River District. In January 1891, a new British Commissioner and Consul General, Claude MacDonald, was appointed for the Oil River. MacDonald who set up a new government with headquarters in Calabar for the direct administration of the area, had some assistants who held judicial warrants which facilitated the establishment of Consular Courts in the area. These Consular Courts supplanted the Court of Equity. A year after MacDonald's appointment, the earliest of the native councils had come into existence. By February 1892, what was called the 'High Court of the Native Council of Old Calabar', of which the Consul was the President and acted as a Court of Appeal for a number of Minor Courts established on the Cross River, was already in existence.¹⁵ Before MacDonald left, the British constituted courts were already functional at Calabar, Degema, Buguma, Tom Shott, Adiabo and Itu in Ibibio land.

In December 1899, when the Charter of the Royal Niger Company (RNC) was revoked, the portion of the River Niger that was formerly under the control of the company was amalgamated into the Niger Coast Protectorate and became known as the Protectorate of Southern Nigeria on January 1, 1900. The incumbent was empowered to legislate by Proclamation and establish a Supreme Court with similar

jurisdiction to the High Court of England and also establish African Courts. On May 1, 1906, the Lagos Colony and Southern Nigeria was amalgamated and on March 31st 1908, the whole of Southern Nigeria was brought under one judicial system. But in spite of variations in judicial arrangements, the various parts of Southern Nigeria before 1908, the courts of law so established, did not differ in their essential role. The British established courts served the dual purpose of enhancing the relationship between the Africans and the British, and extending British influence.

In 1912, Lord Lugard was assigned the role to amalgamate the Colony and Protectorate of Southern Nigeria with Northern Nigeria as Governor General. This was designed to enable the two administrations come under a single umbrella bearing the name Nigeria. After the amalgamation in 1914, a special Ordinance was enacted that established classes of courts – the Supreme Court, the Provincial Courts and the Native Courts.¹⁶

Appraisal of the British Court System in Ibibioland

As noted earlier, the trade in palm oil and palm produce drew more Europeans to the Niger coast and opened up the hinterland of the Niger Delta. From the non intervention stance of the British merchants during the slave era, they began to encroach upon the rights of Ibibio communities and the conflicting interest of the Chiefs. The British wanted direct access to the source of palm oil supplies. As such, the British merchants appealed to the home government in London for protection. Oil palm trade in Ibibio area, as was the case in other parts of the Bight of Benin and Biafra was conducted on the basis of the Trust System, which involved the European supercargoes giving their African middlemen more European goods than they could immediately redeem, trusting that the middlemen would supply them with palm oil to the value of the goods delivered to them in trust.¹⁷ As the trade developed, there arose along the coast the informal Court of Equity, which was established to settle trade disputes between the supercargoes and African traders.

Noah notes that the enduring institution that established colonial rule in Ibibioland was the British Colonial Courts.¹⁸ The courts were not only meant to provide

¹³ O. Adewoye, *The Judicial System in Southern Nigeria, 1854 – 1954*, (Longman Group Limited: London, 1977), p. 12.

¹⁴ J. R. Bassey, "Indigenous Knowledge of Law in Pre-colonial Akwa Ibom Area: A Comparative Study of Similarities and Differences between the English and African Legal System," in S. O. Olotuntoba, A. Afolayan, O. Y. Haliso (eds), *Indigenous Knowledge System and Development in Africa*, (Ibadan: Macmillan 2020), p. 223

¹⁵ E. A. Afigbo, *The Warrant Chiefs: Indirect Rule in Southern*

Nigeria 1891-1929, (London: Longman Group Ltd, 1972), p. 24.

¹⁶ U. Udoma, *History and the Law of the Constitution of Nigeria*. (Malthouse Press Limited, Lagos, 1994), p. 38.

¹⁷ M. E. Noah, "Social and Political Developments: The Lower Cross River Region, 1600 – 1900," in Abasiattai M. (ed) *A History of Cross River Region of Nigeria*, (University of Calabar), p. 104.

¹⁸ *Ibid*, p. 105

lessons in civilized administration, but it was believed that if it functioned efficiently, the process could raise revenue that could aid further military conquests and subjugation, which in turn could open more territories to British trade. It has been observed that the use of European laws in the colonial control of coastal and hinterland regions of southern Nigeria including Ibibio territory started with treaty making.¹⁹ As Robert-Wrays gave the insight into the signing of the treaties by the British. He notes that even before the treaties were signed with any of the local authorities, some legal basis had been provided for the British activities in West Africa as a whole. He quotes the Foreign Jurisdiction Act 1843, which empowered the British crown thus;

*...to establish laws and institutions and constitute courts and officers for peace, order and good government of Her Majesty's subjects and others within existing and future settlements on or adjacent to the coast of Africa*²⁰

Following the Berlin Treaty of 1885, the British proclaimed a Protectorate over Niger area. The Courts of Equity was abolished and the entire system of adjudication passed through the control of the Consul, hence the establishment of the Consular Courts in Calabar and other major towns in the region. Noah is of the opinion that the parsimony of the British treasury, inadequate manpower and lessons learnt from the era of the Court of Equity which sought to have indigenes involved in such matters that affected their areas, it was only expected that more Ibibio people would be called upon to discharge judicial duties in the growing court system, hence the appointment of Warrant Chiefs under the Native Courts system.

An assessment of the Native Courts and the Warrant Chiefs system based on the opinion of the vast majority of people to which it applied, including Ibibioland, most times led to the conclusion that it is impossible to speak of the system in terms of merit.²¹ The courts performed judicial functions which the British were equipped neither by their number nor experience to satisfy.²²

While the services that the Warrant Chief and Court rendered was obvious to the British administration, they were less so to the people. If it was true that the courts accomplished much in the way of settling disputes, it was also true that before the courts were established, the people had their own way of settling disputes and it is safe to say that the courts and Warrant Chiefs were for the most part the architects of the legislations. The major setback laid in the fact that the British courts as was represented by the Warrant Chief system lacked its root in the political tradition of the Ibibio people. In Ibibioland, the very idea of a man called by whatever name or title who had power to 'issue' orders to his village or to his neighbours or to the whole clan, was unheard of and a political novelty.²³ For the first time in the history of Ibibio people, a scrap of paper had the power to change the course of events, the warrants led to serious judicial challenges.

The tragedy of the British introduced courts, the most prominent manifestation of British rule in Ibibioland, contravened traditional practices and usage in all the vital aspects of its constitution and functions. These included the territorial extent of the court's jurisdiction. As already discussed, among the Ibibio in precolonial days, the largest political unit was the village or the village group (clan). But in determining the size of the Native Court area, the British was concerned to ensure that each court made enough money from the fees and fines to be self supporting and that no District Officer had too many courts to supervise. This resulted in a situation in which a vast number of native courts served not just a number of villages but also clans and at times tribes.²⁴ In Ibibio coastal town of Opobo, this scenario created an entirely different conflict on its own. This was evident in the treatment the Andoni received in the Opobo Native Court. It is said that Andoni were the owners of the Island on which Opobo stands, having leased it to King Jaja after his flight from Bonny. From then on, the people of Opobo, because of its wealth and sophistication as traders assumed mastery over the Andoni who hitherto had an ancient tradition of independence. The establishment of Opobo Native Court and the inclusion of Andoni in it, strengthened Opobo's unjustifiable pretensions.

The laws administered by the court was another factor which made it unpopular and untraditional among the people of Ibibio. The operating principle of the Native Court was to be guided by native laws not repugnant to the British

¹⁹ O. Adewoye in *The Judicial System in Southern Nigeria 1854-1954*, (London: Longman Group Ltd., 1977), p. 35

²⁰ K. Robert-Wrays, *Commonwealth and Colonial Laws*, (London, 1966) 3, p. 98

²¹ E. A. Afigbo, *The Warrant Chiefs*. p. 230

²² NAC, CADIST EP 1135, Vol. X, Annual Report, Calabar Province, 1924, p. 5

²³ E. A. Afigbo, *The Warrant Chiefs*: p. 256

²⁴ E. A. Afigbo, *The Warrant Chiefs* p. 259

idea of justice. This led to the growth of a body of law which from the point of view of the people were far from indigenous. The handling of the case of debt recovery, which formed the major type of disputes that dominated the native court illustrate the point. The debt cases and disputes presented one of the far reaching and most unsatisfactory innovations made by the courts. There were three fundamental principles in the traditional law of debt. First, it was the community that had the duty to enforce the payment of debt however contracted. Second was the fact that the debt once contracted, became the responsibility of the debtor's lineage. A debtor-successor inherited the debts along with his estate or lack thereof and other obligations. An action can be taken legally against any of them for the recovery of the debt. Third, the creditor had the legal right to the body or property or both of the debtor or those of the debtor's people.²⁵

The law of debt which evolved from the courts undermined traditional laws and creditor's security. The abolition of slave trade and slavery destroyed creditor's right to the person of the debtor or the debtor's relation.

Another unsatisfactory feature of the British court as represented by the Warrant Chiefs system was the ineffectiveness of the punishment meted out by the court to convicted criminals, for instance the thieves. To the agrarian Ibibio people, theft of livestock or farm produce was a grave offence and on certain occasions carried severe penalties such as ostracizing the culprit. Thieves were smeared with charcoal, whatever they stole was tied on their person and they were paraded in the locality and in the markets and subjected to devastating ridicule. In the days of the slave trade, unrepentant thieves were sold into slavery.²⁶ But under the British court system, the highest punishment for theft was imprisonment.

The procedure adopted by the court was another factor that made the people regard the court as alien institution. The arbitrary selection of four men every month or so, to try all cases which might arise within the court area, made up of villages and clans of non-uniformed culture and traditions was novel. The litigants went to the clerk, who was normally a non-indigene and therefore not versed in the local customs to lodge their complaint. Since it was the clerk who issued the summons, he determined whether a case was criminal or civil too – a decision which could be correctly

made only by the elders of the community in which the case arose. The court swore litigants and their witnesses before taking statements from them; but did so in a manner that made the ritual unconvincing and a parody of the practice in traditional judicial and dispute settlement procedure. The mode of swearing had no value, the gods on which a man swore had to be called by name. Also, before an oath was sworn upon, it had to be invoked by the man who tended it. It was believed that the god, immanent in the visible symbol sworn upon, could be 'there' at the moment. In the traditional system, the oath taking was the last resort, when the dispute could not be settled otherwise. People were not made to swear as preamble to giving evidence. The infringement of these prerequisites on 'proper oath' taking, made litigants contemptuous of the court swearing. Hardened criminals saw nothing in it to compel them to tell the truth, while the honest and conservatives saw nothing in them to make them have faith in the procedure.²⁷

Gaps and Challenges to the British Court System

From the days of the Courts of Equity, gaps abound in the application of the British imposed settlement of dispute in the coastal areas. The Court of Equity as it were was the precursor to the Native Court system that was later introduced when the British subjugated the hinterland Ibibio people to establish their administration.

The siting of the court also presented a gap and bottleneck. The haphazard way the court originated made it inevitable that the court area of jurisdiction often cut across ethnic boundaries. In siting the court, the colonial government chiefly considered administrative expediency. Many courts were established among people considered troublesome and therefore needed greater government observation/presence. For many others, the key idea was to get them located in areas and clans and geographic areas they served. It was not surprising then that guided by purely practical considerations, those who drew the boundaries of the Provinces, Districts and Native Courts failed to take into account ethnic and cultural boundaries and groupings.²⁸

As Abasiattai noted, up to 1914, it was mostly those who guided the troops, giving information or rendering some kind of assistance and other services that the District Commissioner appointed Warrant Chiefs.²⁹ This choice of

²⁵ NAC. CADIST EP 1135, Vol. X, Annual Report, Calabar Province, 1924, p. 5

²⁶ Daniel Udobio, 60+, Traditional Medicine Practitioner, o Ikot Ntuen Oku, Uyo., 5 April 2024

²⁷ E. A. Afigbo, *The Warrant Chiefs*: p. 291

²⁸ NAC, CADIST 12/1/7, SP. 8979, New native Court Ordinance (Bill), 23.3.33, p. 2.

²⁹ M. B. Abasiattai, "The Old Calabar Province Under Colonial Rule: Subjugation and Administration", in Abasiattai M. B.(ed) *History of the Cross River Region of Nigeria*. (Enugu: Harris Press, 1990), p.172

men to superintend judicial affairs of a community was shrouded with gaps. First, armed with the British cap and staff, the Warrant Chief saw himself as a government employee responsible only to the District Commissioner, who alone could dismiss him or discipline him and not to the people whom he could and did exploit with his wide powers. Further, Abasiattai explains that the power of the Warrant Chief far exceeded what the tradition sanctioned for chiefs. Where the traditional chiefs were identified, some District Commissioners associated them with juju, witchcraft and Obnoxious matters and hesitated to appoint them Warrant Chiefs.³⁰ On the other hand too, some traditional chiefs like Chief Akpan Nteyo of Eastern Nsit who received the warrant, did so most reluctantly after being forced by the District Commissioner to attend court.³¹ As the people had little or no choice in the matter, their attitude moved from apathy to grudging acceptance and patronage of the court.

Major gaps and challenges that the British court system experienced in Ibibioland and the havoc wrought on the dispensation of justice is to be found in era of the Native Court system. The era represents the time that the British took direct control of its colonial apparatus through administrative and judicial mechanisms enacted through Ordinances and Proclamations. The British, used to operate the Indirect Rule System in Northern Nigeria with a degree of success, sought to replicate same in the southern parts including Ibibioland. The British selected certain indigenes who they believed were the traditional chiefs and gave them certificates of recognition and authority referred to as warrants. The instrument entitled each of the recipients to sit in the Native Court from time to time and judge cases. It also mandated the bearer to assume executive and judicial authority in the community he represented. This idea was novel in degree and territory.³² Commenting on this from the Ibibio perspective, Noah asserts that from time immemorial, Ibibio people had been used to settling their dispute within the family and kindred groups and rarely within wider groups. Upon establishment of the British rule in the area, artificial groupings were created and a good number of Ibibio units were thrown into court areas embracing hundreds of thousands of people which cut across larger affinities.³³ This arrangement stood in sharp contrast to that which was obtained in traditional Ibibio society, which at the time was a highly decentralized political entity. According to Jeffreys, who was an Administrative Officer in Ibibio, *there is no*

*individual whom the tribe as a whole regard as a ruler or as a person endowed with divine power. There is no tradition that there ever was such a person.*³⁴

Afigbo suggests that among the Ibibio and Igbo people, emphasis came to be laid on taking the titles, which appeared to be tied to the acquisition of surplus wealth by men in the community and the expansion of the economy. The possession of wealth thus came to be regarded as a symbol of ability and good sense, and the visible proof of this was giving the elaborate feast that preceded entry into certain traditional privileged societies.³⁵ Membership of these closed societies conferred new status. Going by the level of political power which was attached to the possession of these titles, the *ntinya* system in Ibibioland were to become the most important. Without taking this title, the head of a group could not hope to exercise the influence vested in that headship or enjoy the privileges that went with it. As such, certain holders of the *ntinya* titles had exclusive rights to preside over particular types of cases, for example *Obong Unen* (chief of fowls), *Obong Urua* (chief of markets and commerce).³⁶

As the above illustration shows, the men in Ibibio society who reserved exclusive right to attend 'courts' and judge cases in the villages were elders, men of means and power, who commanded respect and political following. It was to be expected therefore that the men that the British conferred with power through warrants had to measure up to society's standard of 'men of power' on account of their new status and command the political following. It seems there appeared only one way they could achieve this dream and that happened to be through corrupt practices and coercion. Accordingly, the first noticeable gap in the British established court system was the men that were selected to sit on the bench and their mode of selection that alienated the traditional selection processes. This process proved fatal as it led to a measure of highhandedness on the part of the new men of power the Warrant Chiefs, who were in deep competition to please the British officials and retain their position of privilege than to succumb to the traditional ways of the society.

In the period before 1900, each Native Court had its retinue of court messengers whose duties were vague in the extreme. Then, it was the practice for the plaintiff to serve the summons on the defendant while the court messenger

³⁰ *Ibid*, p. 173

³¹ *Ibid*

³² E. A. Afigbo, *The Warrant Chiefs*: p. 65

³³ Monday E. Noah, *Proceedings of the Ibibio Union 1928-1937* (Uyo: Modern Business Press Ltd. 1988), p.35

³⁴ M. D. W. Jeffreys, *Old Calabar and Notes on the Ibibio Language*, (Calabar: Hope Waddel Training Institution Press, 1935), p. 23

³⁵ E. A. Afigbo, *The Warrant Chiefs*: p. 22

³⁶ Koko E. Ine, *The Changing Faces of Ibibio History, 1885-1987* (Uyo: Ndeco Educational Publishers, 2017), p. 18.

worked in the prison as warders, served Consular Court processes and acted as orderlies. That way of serving native court summons which entailed parties in a dispute confronting each other before it was settled, especially in the early days when summonses were novel and dreaded, often led to collisions between litigants, and to further breaches of the peace. The unsatisfactory nature of this process led to a decision to use court messengers in serving court processes. Initially, the messenger went directly to the defendant, but this method was also unsatisfactory for two reasons. First, it led to violent clashes between the messenger and the defendant supported by his people and had not ensured that the defendant would unfailingly respond to the summons. Second, it tended to undermine the authority of the local Warrant Chief who felt he was not fully made use of as the 'native authority'.³⁷

By far the most yawning gap that existed in the British introduced court system was the introduction of taxation. The idea of direct taxation was unfamiliar in Ibibioland. The courts, exercising executive, judicial and legislative authority and functions were expected to have a treasury, which was meant to teach practical lessons in finance and economics to the people and introduce them to financial management.³⁸ Taxes were assessed for individuals and communities based on annual income for the purpose. This was accomplished by estimating or computing the total of four sources of income including profits from land and produce thereof, profits from trade, manufacture, office or employment, income from pensions, annuities, dividends or interests and the value of livestock owned by an individual in the province in which he was resident.

For the purpose of tax collection, District Councils were appointed as collection authority. These authority could appoint tax collectors who had defined responsibilities. Stiff penalties were imposed for refusal to give information or pay taxes when demanded. The tax collectors did the collection and often had to make up for the shortfall.³⁹ This made them assume enormous powers in the matter of tax assessment and collection by placing intermediaries between the tax payers and the public authority responsible for the collection; this system had the disadvantage of reducing the payment of individual assessment, and inhibited the spirit of civic responsibility.⁴⁰ The defaulters were encouraged by locals to flee their communities to the fishing creeks for which Ibibioland is known, if they succeeded in fleeing and remained in the creeks for a year and thus evade tax payment,

the collector would be held liable.⁴¹ The highhandedness of these categories of British court employees eventually led to the tax riots and disturbances that pervaded the Eastern Region starting 1925, which culminated in the Women's riot of 1929, in which six women were killed in Opobo. These events led to the collapse of the warrant chiefs system, and necessitated the judicial reforms of 1933.

Judicial Reforms 1933

The judicial reforms owed its origin to the return of Donald Cameron to Nigeria from Tanganyika in 1931. He brought with him the concept of colonial development that has been described by Adewoye as dynamic. The way and manner native administration was being put into practice in Nigeria received his censure. In his reasoning, a greater amount of anxiety had been displayed in the past to save the prestige of the native administration. There existed the danger of attaching greater importance to the machinery than to the people it was meant to serve.⁴² There was also the danger of erecting the native administration into a feudal oligarchies, 'prepared to be benevolent and paternal to the native so long as he will stay put and not raise envious eyes towards the full share in all that Western civilization can give'.

There were grounds to justify the fears of those who held that the administrative officers used their judicial powers under the court for political ends. A sizeable proportion of the alleged criminal offences tried before the courts involved infringements of local Ordinances and Bylaws intended to enhance local administration or to safeguard the economic interest of the British. The powers of the courts was sometimes invoked to secure labour for the service of the colonial administration. For instance, in *Rex vs. Bira of Bewa*, (1929), the accused, a head chief in Opobo District was convicted of 'conduct likely to cause a breach of the peace' by failing to repair the Government Rest House at Bewa after due notice. To Adewoye, there was always a political undertone in the prosecution of village headmen at the courts for alleged tax evasion. Failure to pay tax or delay in paying tax 'may amount to a form of passive resistance'⁴³

Another aspect of political use of the court was to invoke its power to suppress element in the indigenous population, usually 'recalcitrant' chiefs and educated Africans whose activities were considered inimical to the interest of the administration. The final form that the judicial reform or

³⁷ E. A. Afigbo, *The Warrant Chiefs*. p. 24

³⁸ Monday E. Noah, *Proceedings of the Ibibi Union 1928-1937* (Uyo: Modern Business Press Ltd. 1988), p. 28.

³⁹ *Ibid* p.29

⁴⁰ *Ibid*, p. 28

⁴¹ *Ibid*, p. 29

⁴² Omoniyi Adewoye *The Judicial System in Southern Nigeria 1854-1954*, (London: Longman Group Ltd., 1977), p. 224

⁴³ *Ibid*,

the reform of the British established courts took after the fall of the Warrant Chiefs system was thus; in place of the Provincial Courts, was established the Magistrate and High Courts. The High Court, which was at the top of the hierarchy of courts consisted of a Chief Judge, Judges and Assistant Judges. This court did not exercise jurisdiction over certain matters such as probate, divorce and matrimonial cases. This category of courts did not have original jurisdiction in land disputes though it had appellate jurisdiction in such disputes if they were transferred to it from Native courts.

The Magistrate Courts were courts of summary jurisdiction. Any fit and proper person could be appointed a Magistrate and legal qualification was not deemed essential. Like the High court, the Magistrate court had original jurisdiction in land matters. They entertained appeals from certain categories of Native Courts and could also transfer cases from such courts to themselves or to other Native Courts.⁴⁴ The Native Courts remained at the bottom of the judiciary. Administrative officers exercised control over majority of these courts. The original jurisdiction in land matters was vested in this court and there was no appeal against the decision of the land dispute unless the value of the land in question was above N400 (four hundred naira)

The Native courts were the most unsatisfactory aspect of the judicial reforms of 1933. There was in particular the imprecision of language of the Native Court Ordinance. Jeffreys captures this in his memorandum:

*I have the honour to invite your attention to what appears to be a serious omission in the bill for a new Native court ordinance. No provision is made for annulling the judgment of a Native Court even though the judgment may have been obtained 1) by fraud, 2) by bribery and corruption, 3) by subornation or perjury.*⁴⁵

Conclusion

Ibibio traditional legal system was subjugated by the advent of the British courts. As can be seen, the area was well organized with laws and mores that governed every day activities. The basic institutions for legislation was not different from those means of political and social living, thus

the judicial system was intertwined with religion and cosmology and played a huge part in shaping the life of the people and dispute settlement.

The establishment of colonial administration, including the court system upsetted this balance and represented a transition from the reservation of social equilibrium by the community to the impersonal justice of the courts. This change was brought with its attendant gaps and challenges in terms of methods, procedures, the philosophy which were alien in justice dispensation in traditional Ibibio society. This difference, in turn created gaps and challenges for the British court system mostly from the functionaries of the courts. These challenges and gaps snowballed into conflicts of their own and ultimately led to reforms.

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⁴⁴ *Ibid*, p. 225

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