The Politics of Informal Justice: A Critical Analysis of Informal Process of Justice in Rural Kilba, Mumuye and Jukun of Nigeria

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Résumé: *Cet article donne un aperçu de la pratique de la justice informelle dans les communautés rurales de Kilba, Mumuye et Jukun du Nigeria. L'auteur soutient que la plupart des prétendues vertus de la justice informelle: l'avantage de la proximité du tribunal dont bénéficient les parties plaidantes, frais de justice peu élevés, participation, ainsi que la prédominance du consensus, n'ont pas été démontrées par l'étude. Cela s'explique par le contexte socio-économique dans lequel se déroule cette justice.*

Introduction

A lot of studies on the actual operation of criminal justice has been done in Europe and America. Many of these studies have shown that the due process — a notion on which criminal justice is said to operate and ensure justice for all that experience it — is not at all justice ensuring as far as the poor, minorities and women are concerned (Bottomley 1973; Robertson 1974; Sikes 1975). One of my criminological studies in former Gongola State, which draws on a survey of 300 prisoners from three Prisons (Hong, Jalingo and Wukari), and on the examination of 300 cases files from magistrates' courts in Yola, has also revealed gross injustices in formal process of justice in Nigeria (Sa'ad 1988).[1] In that study, it has been found that from arrest to investigation, the majority of the 300 prisoners interviewed suffered in the hands of the police from all sorts of brutality in breach of their constitutional and legal rights, and human dignity. This appears to be partly because of the wide discretionary powers the Northern Nigerian Criminal Procedure Codes

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1 Two similar studies with results similar to this study were conducted four years earlier in Borno State of Nigeria (Sa'ad 1991). In fact, a handful of scholars, lawyers, police, Judges and other eminent personalities in Nigeria have also decried the inadequacy of, and the injustices in the Nigerian Criminal and penal processes (Adeyemi 1975; Elias 1968 and 1972; Odekunle 1977, 1979 and 1982; Sa'ad 1981).

gives the police, and partly due to the socio-economic status of the respondents which rendered them unable to bribe or influence the police.

Concerning bail, the evidence was that most of the 300 respondents in prison and 300 defendants sampled from Yola Magistrates' Courts' case files, failed to get bail mainly on financial grounds. Consequently, they suffered for long periods of time the pains and restraints that even a 'proper prisoner' was not subjected to. Thus, contrary to the ideals of a formal justice system, they were assumed guilty even before their trials and started receiving punishment even before they were convicted and sentenced. Remand conditions together with the police maltreatment of the respondents who were not on bail while on trial, led to many of them pleading guilty when they were most probably not.

As for the right to legal representation, it was simply a constitutional cosmetic as far as most litigants were concerned. That legal representation was of benefit to the few richer litigants who happened to have them was pretty obvious in that study — most were either discharged, bounded over to be of good behaviour or merely fined. The few who were imprisoned despite having defence counsels were certainly satisfied with the terms of imprisonment they received. Hence, they did not care to appeal even though they had the money to do so.

Regarding the pattern of sentencing, the courts passed their sentences in an 'off-the-cuff' manner. Consequently, not only that many of the respondents in prisons could be said to be wrongly there, but the average terms of imprisonment for those of them convicted on only one count each, were close to the statutory maximum specified in the Penal Code sections under which they were variously convicted. Interestingly however, all those who were relatively wealthier were able to pay their fines to avoid imprisonment.

Finally, although litigants have the legal and constitutional rights to appeal, within a given period of time, against certain specified injustices they felt they suffered, only one-third of the respondents in prison, who would have wanted to appeal, had the resource and opportunity to appeal. What was more, none of the very few who appealed heard anything about their appeals for which they had applied a year earlier, nor were they released on bail pending the results of their appeals.

In short, it was very clear in that study that formal justice in practice in Nigeria was rough, costly to many, time consuming, and sentences were generally severe. To be sure, it was not the actions of the law enforcement agents (police and courts) alone that mar the realisation of the ultimate objective, i.e., justice, of the Nigerian formal justice system. The nature of the law administered by, or binding, the law enforcement agents, and the socio-economic status of litigants appeared clearly to be responsible as well. With regard to the law, it was clear that in some situations the law

enforcement agents have many options as to which section of the law to apply. And in situations where law enforcers are bound by only one section of the law, having no alternative section to resort to, the wording of such a rule is usually broad and open to abuse. In other situations, the law gives rights to only certain types of accused such as the legal aid provision which limits legal aid to only capital offenders and appellants. What is more, in other situations, such as the rule against the appearance of counsel in Area courts, the law openly denies the accused their constitutional rights. In short, much needs to be done in terms of legislation to protect and uphold the human rights of litigants in Nigeria.

It was also established in that study that Nigerian formal justice was unable to provide justice to most, if not all, of the prisoners interviewed in the study because of their socio-economic circumstances. Majority of them were not on bail, did not get legal representation, and could not appeal against their judgement or sentences which they were dissatisfied with mainly because they did not have the money. There were also a few who were in prison because they could not pay fines. It seems apparent therefore that a right of action will always stay illusory if the means of invoking it are beyond the reach of a person having such a right. It is mainly for this reason that the protagonists of informal justice would prefer informal over formal justice. The central concern of this paper therefore, is to critically examine if 'informal' justice in Nigeria is, in terms of the virtues its protagonists attribute to it, any better.[2] These virtues relate to the nature of the process of informal justice, its social-structural organisation, and the nature of its outcome. It is however pertinent to first of all describe, albeit briefly, some social characteristics of Kilba, Mumuye and Jukun societies.

Social Characteristics of Kilba, Mumuye and Jukun Communities

Politically the Kilba have from ancient times recognised a central authority in the person of the chief of Hong known as *Til* Hong. The *Til* Hong was not a divinely appointed ruler. He was, however, a priestly as well as a political leader. He and two of his leading officials, the *Hedima* and *Kadagimi*, were the leaders of the highest cults in Kilba: *Kateshawa-Kurndasu* and the *Shantaru* cults respectively (Sa'ad 1979:16). *Til* Hong was usually chosen from one of two royal families namely *Kasheri* and *Dawi*, which have become identified with Mithili and Gaya areas respectively. The authority to choose *Til* Hong lay in the hands of *Hedima*, the Prime Minister, and four others namely, *Birawal*, *Biratada*, *Kadagimi*, and

2 The material discussed in this paper has been collected from nine rural areas (three each from Kilba, Mumuye and Jukun) of former Gongola State during my seven months (July, 1986 to February, 1987) fieldwork for a doctoral thesis.

Kadafur. Other title holders surrounding the *Til* Hong at Hong included *Batari*, *Zarma*, *Midala*, *Kadala*, *Sunoma*, *Burguma* and *Kadakaliya*, *Duba-Dubu*, *Talii*, *Dubu-kuma*, and *Danyatil* (Sa'ad 1979:15).

All members of the royal families however, lived in the outlying villages. For example, a senior member of the Mithili branch of the royal family bearing a title known as *Til Uding*, lived in Uding village and from there controlled the Mithili area; while that of Gaya branch controlled Gaya area from Mijili, and was known by the title *Til Mijili*.[3] Under them were the village-heads bearing the title *Shal*. They were usually members of one of the two royal families appointed by *Til* Uding/Mijili and his priestly officials. These local royalties ran their local units quite independent of both the *Til* Uding/Mijili and *Til* Hong. Thus, the system of leadership established by Kilba, though fairly elaborate, did not entail the centralisation which we shall see in Jukun society.

The structure of Kilba justice system paralleled its political organisation. All disputes were referred to *Shal*. Only matters which proved beyond their competence were referred to *Til* Uding/Mijili or ultimately to the central chief, the *Til* Hong. Offences which were beyond the competence of *Shal* included: 1) disputes involving a prisoner guilty of murder by projecting needles into the body of his enemy; 2) disputes over adultery with wives of *Til* Hong, and; 3) suspected cases of serious theft which called for a divine decision. Two type of disputes seemed outside the jurisdiction of all the three types of Kilba chiefs — *Til* Hong, *Til* Uding/Mijili, and *Shal*. These were disputes involving the deliberate killing of a person, or witchcraft that led, or was suspected to have led, to a sudden death of the victim.

Politically, the Mumuye had no central government. They recognised the priest of Yoro known as *Vabon* (the chief rain-maker) and Yoro itself as their original home. But outside his magico-religious duties, the priest of Yoro's authority was entirely confined to his own local group; a village area of Yoro which consisted of a number of hamlets. For the Mumuye authority structure to become clearer one should give some account of their form of social organisation as the two were intertwined.

The Mumuye lived in hamlets. A number of self-contained hamlets formed a local unit or group which could be referred to as a village-area. For example, one of the village areas surveyed was Mika, and it consisted of about twelve hamlets, viz.: Dansa, Danyusa, Dimhe, Kakulu, Kupuli, Lanapu Boro, Lanapu Koron, Lanupu Tokolon, Lanapu Wariham, Pawuno, Shomman and Zahan (Meek 1931a:450). Each hamlet was

3 The title 'yerima' which Meek said they both bore (Meek 1931a:183) was incorrect. The title are borne by royal family members who live outside Hong as mere princes (Sa'ad 1979:15).

composed of a number of extended families each of which was known as *dollassa* (meaning beer drinking group) which were usually related to each other by blood on paternal line. Each village-area and hamlet had its own *Vabon* who was both the religious, social and political head of his people. Also, each *dollassa* (extended family) within a hamlet had its own *Vadosun* as its religious, social and political head. Administratively, the *Vabon* of a village-area was also the *Vabon* of the hamlet within which he resided as well as the *Vadosun* of his extended family (*dollassa*). He thus controlled the affairs of his hamlet and extended family as well as other hamlets and their extended families through their various *Vabon* and *Vadosun* respectively. On the other hand, the *Vabon* of the hamlets were also the *Vadosun* of their extended families, and thus controlled their extended families and those of others through their various *Vadosun*.

The structure of the Mumuye traditional legal system was parallel to its social and political organisation described above. All less serious disputes within extended families could be settled by *Vadosun*, those between two families could be settled within hamlet by the *Vabon* of the hamlet, and those between hamlets could only be settled by the *Vabon* of the village-area. Thus in Mumuye legal system, like in Kilba's, a jurisdictional hierarchy existed though, in the former, it completely stopped at the village-area level without extending to the chiefdom.

Socially, the Jukun lived in local groups consisting of extended families some of which were not related by blood at all, but which members believed themselves to be related.[4] These local groups also bore common titles. But, as Meek (1931b) rightly observed, sometimes even the common title merely indicated the place of origin of the extended family rather than indicating a blood relationship. For example, *Ba-pi*, *Ba-Nando* and *Ba-Kundi* means immigrants from Api, Nando and Kundi respectively. What was more, these extended families were also not totally exogamous. For all the foregone factors, Meek concluded that the Jukun could only be said to have lived in Kindreds rather than in clans. Outside Wukari, the capital city of the Jukun, a single kindred lived close together forming a village which bore a name different from that of the kindred. But in Wukari several kindreds were found and each was frequently scattered through out the eight wards of the city which were known as *Abadikyugashi*, *Abagbonkpa*, *Abakpoto*, *Abavi*, *Abanuti*, *Abakata*, *Abandogwa* and *Abanduku*. Each ward was headed by its member who held a senior title received from the *Aku-Uka*, the divine king of the whole Jukun.

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4 For a more detailed description of the social organisation of the Jukun, see Meek (1931b: Chapter II). According to elders interviewed the situation as described by Meek during the colonial era was basically true of the pre-colonial era.

In the village, which usually consisted of a single kindred, the priest of a very important cult of the kindred was regarded as the religious as well as the social and political leader of the village. However, an ordinary man could, by his influence or affluence, succeed in obtaining a senior title from *Aku-Uka* at Wukari and be regarded the social and political leader of the kindred. Thus, as the executive head, he was subordinate to the chief priest only in religious matters. At the extended family level an eldest member who might also be the custodian of an important cult of the family was the executive and religious leader of the family. However, it should be noted that every Jukun household was a religious organisation par excellence, and that all leaders beginning from the extended family level through kindred—or village-head, and ward-head to *Aku-Uka* and his counsellors were regarded as being, in varying degrees, incarnations of a deity. The supreme incarnation being the *Aku-Uka* at Wukari.

The government of Jukun, unlike those of Kilba and Mumuye, was said to be centralised at the capital, Wukari.[5] Each of the senior officials at Wukari was being responsible for the administration of one or more outlying villages. Thus, for example: the *Abon-Anchuwo* was responsible at Wukari for the villages of Wunufo, Tsufa, Akyekara, and Shinkai; the *Abon-Ziken* for Abinsi; the *Kinda-Anchuwo* for Ritti, Fyayi, Gangkwe, Tikason, and Kinyishi; the *Kinda-Bi* for Dampar, and; the *Katon-Banga* for Akwana. Each official at Wukari was able to keep firm control of his area(s) through constant touch by means of messengers. Thus, although in almost all secular matters the family looked first to the head of the extended family, most of these matters were referred to its official representative at the capital through its kindred or ward-head, and, when necessary, to the *aku-Uka* himself through *Abon-Anchuwo* who was the representative of the people in their relations with the king.

As regards the structure of the Jukun traditional justice system, a parallel could be drawn from its political and social organisation briefly described above. As the supreme head of the religious, social and political life of the people, the *Aku-Uka* was also the supreme person to refer to in some more serious disputes. Normally then most disputes were dealt with by authorities below him — the heads of the extended families, kindreds or wards, and some senior officials in the capital.

The Nature of the Process of Informal Justice

The issues usually addressed here relate to speed and cost involved in justice processes, and the roles of the disputants, of their relatives, of the dispute

5 For a detailed ethnographic description of the Jukun's governmental organisation see also Meek (1931b: Chapter VIII).

settlers and, finally, of the public. The protagonists of informal justice claim that informal justice process is just because, unlike formal adjudication, it is cheap, speedy, dispute settlers only mediate between disputants, and that almost everybody in the community participate fully (physically and emotionally) in the dispute settlement process. In the following three major subsections, all the above so-called virtues of informal justice will be assessed critically against empirical materials from Kilba, Mumuye and Jukun rural communities of former Gongola State of Nigeria.

Cheap Versus Costly

The process of informal justice are usually regarded as cheap to an individual disputant for two main reasons: 1) the proximity of the informal 'courts', and; 2) the non-requirement of a legal representation (Danzig and Lowy 1975; Galanter 1974; Merry 1979).

It is true that, unlike the formal courts, there was at least one informal 'court' in every Kilba, Mumuye and Jukun locality since a leader (religious or otherwise) of every locality was also the local community's dispute settler.[6] This, according to elders in these respective communities, has been the case since as far back as their grandparents could remember. So, if one was to go by this fact alone, one could conclude that the systems of justice in Kilba, Mumuye and Jukun rural areas are cheaper for individual disputants than the formal justice system since in the former, a disputant does not have to travel far away in order to lodge a complain, or have his/her dispute settled. However, if one assessed more critically the jurisdictions and powers or authorities of the various hierarchies of the so-called informal courts as they existed in the past in these societies, one would not succumb to such a sweeping generalisation. Amongst the Kilba for example, not all disputes could be tried by local *Shals*. Few others, such as murder by projecting needles into victims body, adultery with wives of one of the ruling authorities, and any serious dispute that called for a divine decision, had to be taken to Hong with generous gifts to the *Til* Hong.

Among the Mumuye too, though any dispute, except homicide, could be settled by any of its three types of leaders (*Vabon* of the hamlets, and of the village-areas, and *Vadosun* of the extended families), the major determining factor as to which leader could settle a given dispute was the place of residence of the disputants involved. So, if a member of one village-area stole from a member of another village-area, the problem would ordinarily

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6 Magistrates' courts were available only in the Local Government Headquarters of these communities, which are Gombi for Kilba community, Jalingo for Mumuye and Wukari for the Jukun. There were also the grades III area courts in Hong for Kilba, and in Pantisawa and Pupule villages for the Mumuye.

be taken to a Yoro priest. But, as it was repeatedly stated by the elders, disputes were usually not taken to Yoro. The reason for that appeared to be because of the distance of Yoro. The consequences were fights and deaths which were, of course, more costly.

Among the Jukun as well, almost every dispute had to be transferred to Wukari for the final settlement. The disputants had also to be accompanied by one of their relatives, taking with them some generous gifts to their next dispute settler, their village-representative, at Wukari. Some of the elders interviewed reckoned that some of the main deterrents of crime in the olden days, was the fear of the waste of time and materials involved in their (Jukun) dispute settlement process.

Thus, although physically the informal 'courts' were at the 'door-steps' of every individual Kilba, Mumuye and Jukun, functionally they were not that close. In other words, the functions of these, especially the Jukun, informal 'courts' were not as fully decentralised as the protagonists of informal justice would have us believe. Consequently, the process of informal justice might as well had been as costly as that of the formal one. However, in the paragraphs that follow, it will be demonstrated further that even if functionally the informal courts in Kilba, Mumuye and Jukun were totally decentralised such that disputants did not have to travel out of their villages or immediate localities, the process of justice in each of these communities could be anything but cheap. Substantial material costs to disputants were still involved because of the so-called gifts the disputants were usually required to make either before, during and after a settlement, or at any one or two of these stages. The costs that were involved in each of the three communities' systems of justice are discussed fully in a recent study (Sa'ad 1988:Chapter 5 and pp.158-164). But because of the limited space here, we can afford only one example from the Kilba community.

In Kilba for example, when a thief was caught in the act by several people, in which there was no need for a search, he would be taken direct to a local *Shal* without any gift been necessary. But if a search was to be made, the complainant would make a gift of at least two chickens to *Shal*. During the course of the search, every household searched would be required to make a generous gift to the search team. In one of the disputes witnessed in Kilba, a search team of four was employed for two days. The complainant gave a chicken before the search and a goat after. As many chickens as 11 were obtained as presents from the householders searched. It was also reported that they were entertained with some beer.[7] The 11 chickens were

7 The need to lavishly entertain dispute settlers when they visit the compounds of disputants in an on-going trial is not an uncommon element of informal justice (Merry 1982). In her study Merry found that in order to avoid violence escalating, mediators

however regarded as relatively small by the dispute settler and two other elders because, according to one of them:

> People nowadays are not generous. They think they are wise, but it is better for every man in this, our village to be generous in such a thing because he may one day need it (meaning the service of the search team).

In this case, the search team was successful. If it had failed, which, according to the dispute settler, was not unusual, the complainant would have had to appeal either: 1) to *Katu* or *Malamusu* cults by taking at least two baskets or bundles of grains and 1 *Gammo* (or a minimum of ten Naira in local currency), or; 2) to *Kurta* cult by taking at least a goat and a big flowing garment to a well known medicine man, which was what a complainant in one (a theft of grains from a dwelling place) of the four disputes observed in Kilba did. That consulting either of these cults is expensive is attested to by the complainant who consulted *Kurta* cult. Although the relatives of the culprit were made to compensate him by replacing all the five sacks of his farm produce stolen, he was not happy that the compensation did not take into account the expenses he incurred by consulting the *Kurta* cult, which he regarded as heavy.

Speed Versus Delay

One of the major elements of injustice in formal systems of justice is said to be their inability to deal with cases efficiently. Delays usually bring a lot of suffering for litigants, especially those who are not on bail. That this is true of formal justice in Nigeria has been clearly evident in previous research in this area (Sa'ad 1984:13 and 14, 16-18; Sa'ad 1988:121-139).

Contrary to this, informal courts are said to be able to deal with disputes as they come without any delay, and therefore are more just. In stating the theme of his paper on informalisation of formal justice system in America, Danzig (1978:1-2) wrote:

> What is salient to the informal citizen and academic alike are the facts that... major metropolitan courts abrogate their principal function [i.e., justice] by not adjudicating the guilt or innocents of the majority who come through their doors. This article focuses on one of the ideas that have been put forward as cures or at least crutches for the American municipal justice system; the idea that increased effectiveness [and therefore justice] can be achieved by decentralisation [informalisation] of some or all of the operation of existing system (Words in brackets not in original. See also Sander 1976).

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often visited disputants constantly and each visit demanded lavish hospitality with the most desirable food.

Writing on the speedy nature of informal justice in five small-scale societies she studied, Merry (1982:29) pointed out that dispute settlement was initiated immediately before the disputants could 'think about their ancestors, their pride and social positions'. This fact was evidently true in Kilba, Mumuye and Jukun rural communities. It was unlike in the formal system where a time-lag usually exists between an arrest and when the defendant is finally put on trial before the court. In many cases the delays are of a serious nature. But with regard to all the 12 dispute settlements witnessed in rural communities of Kilba, Mumuye and Jukun, the process started right at the moments they were brought for settlement before the authorities concerned. And as the authorities acknowledged, this was usually the case. However, the rest of the justice process in most of the disputes was not so speedy as the protagonist of informal justice would have us believe.

To be sure a dispute in Kilba, Mumuye and Jukun, was more likely to be dealt with within a maximum of three days. But more importantly however, in 11 of the 12 dispute settlements encountered in our research, the full enforcement of the decision reached did not occur immediately after. An ultimatum within which a full compliance was expected was given, and there were indications that a full enforcement in each of these settlements was likely to take dispute settlers a long period of time. One indication is that throughout the seven months of fieldwork, a full compliance was, to the best of our knowledge, met in only two of the 12 disputes settlements observed. Other indications abound in our more recent work, where the substance of the decision taken, and the ultimatum for compliance to the decision reached in all the 12 dispute settlements (four each from Kilba, Mumuye and Jukun) observed, is fully described (Sa'ad 1988:165-171). In fact, the dispute settlers themselves confessed that their ultimata are frequently breached these days. The reason some of them gave was that they now have ceased to have the authority their predecessors used to have.

The argument that ultimata were infrequently breached in the past is difficult to counter argue. But, even in the olden days of Kilba, Mumuye and Jukun, a full enforcement of a decision in most types of dispute settlement did not seem to take place immediately.[8] Usually, a guilty opponent was simply required to comply as soon as possible without any fixed ultimatum. If after some times (days, weeks, or even months, depending on the desperation of either the dispute settler or the complainant), the defendant did not comply, he would again be brought before a dispute settler for another trial. The dispute could take a new dimension requiring for example, some use of ordeals, or appeals to some cults. Thus, it was very likely that

8 For details on the protracted nature of informal justice in the pre-colonial era in Kilba, Mumuye and Jukun, see Chapter 5 in Sa'ad 1988.

even in the olden days, authorities did take long period of time to fully resolve a dispute. It is even debatable that disputes are ever fully resolved in small-scale societies simply because of the informality of their systems of justice. For if a dispute is 'any kind of behaviour that points to contention based on opposing claims and involves the taking of sides between persons or groups' (Epstein 1974:9), a dispute, it seems, cannot be fully resolved as long as its source (i.e., the bone of contention) remains unresolved; the nature of justice system (formal or informal) notwithstanding.

Full Participation Versus Non-Participation

Another major element of injustice in the trial process of formal justice is said to be the lack of freedom for litigants, their relatives and the public to fully (physically and emotionally) participate in an on-going trial in a court. Defendants and, more especially, complainants are usually represented by legal experts or, to use the language of one of the protagonists of informal justice, 'professional thieves' (Christie 1977:3). While the experts talk the most, the litigants and their witnesses talk the least; their talk being always guided by the experts. In contrast, an informal court is said to allow free exchange of words and arguments between litigants and their supporting camps such that almost all the people in the local area of an informal court do both attend and participate fully in the trial process (See e.g., Pospisil 1971:35-6; Felstiner 1974; Sander 1976).

In the sections that follow, the degree/level of participation exercised by disputants, dispute settlers and other people in dispute processes among the Kilba, Mumuye and Jukun in the rural areas visited is examined critically. This is done in two stages. First, by finding out and analysing the percentages of those who attended at most one dispute session from the total populations of each of the rural areas of Kilba, Mumuye and Jukun from which each of the 12 dispute settlements was observed. Secondly, by analysing the distribution, and the proportion of the talks/comments made by the different categories of persons that attended at most one dispute session.

Participation Measured by Number of Attendants

The total number of people present at any dispute settlement session for each of the 12 dispute settlements witnessed have been obtained by counting both the people who came and remained throughout the session, and those who came and left while the session was still going on. Care was taken not to recount those who left and then came back while the session was still on. More than one dispute sessions were held in most of the 12 dispute settlements observed. In those settlements, only those people who were not present in the previous session(s) were counted. The new total was then added to the old one. Thus, the figures in column three of Table 1 below are, as much as possible, free of duplication or omission.

And in obtaining the population figures in column 2 of the table, the tax-payers lists were used, because the populations of these areas were not available in the Statistics Division of the Ministry of Finance and Economic Planning which was the major body responsible for providing such information for the areas. Thus, the tax collectors and I went through the tax-payers' lists, counting number of single and married males, and the number of wives of the married males.[9] The population figures are therefore not comprehensive. They exclude non-tax paying adult males with their wives (if married), female without husbands, and children. Despite this obvious underestimation of the total population, involvement of people in the processes of informal justice in rural Kilba, Mumuye and Jukun, measured by number of attendants, was very low.

Table 1 below shows that in Kilba, Mumuye and Jukun respectively, only 13.0%, 7.4% and 10.7% of the population attended at most one dispute session. From further discussions with dispute settlers, it seems this recorded attendance at scenes of dispute settlement processes was higher than usual for many years, suggesting that somehow our presence attracted people to the scenes. A statement from one of them summarises it all:

> It is quite a long time since I saw as many people coming to witness our dispute settlement (Sasantawa) as today. Not many people do come when there is Sasantawa as they used to do in the past because nowadays everybody is busy going about his business. And many people do not have regards for our tradition nowadays.

So, to the consternations of the protagonists of informal justice, it is most proper to say here that almost all rural population in Kilba, Mumuye and Jukun do not participate in their informal justice processes. Moreover, Merry, herself one of the protagonists of informal justice, in her paper on five small-scale societies noted that dispute settlers were sometimes only go-between; meeting with disputants privately (Merry 1982:24 and 26). This means informal justice does sometimes deprive its public even the simple appearance at the scene of a dispute settlement. It may however be argued that in the past far more people than now in Kilba, Mumuye and Jukun societies had participated fully in dispute settlement processes. This is clearly implied in the statement of an elder quoted above, and in the discussions of the pre-colonial situation with elders.

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9 Thus: 1) In Kilba, out of 255 tax payers, 86 were married to 172 females. Total population: 255 + 172 = 427. 2) In Mumuye, out of 217 tax payers, 130 were married to 223 females. Total Population: 217 + 223 = 440. 3) In Jukun, out of 263 tax payers, 116 were married to 169 females. Total Population: 263 + 169 = 432.

Table 1: The Total Populations of the Local Areas Studied in Kilba, Mumuye and Jukun Rural Communities, and the Proportions of the Populations that Attended at most One Dispute Session Observed in those Areas

Types of Communities	Total Population	Total Number of Persons that attended a maximum of One Dispute Session	Percentages of the total populations that attended a maximum of One Trial Process
Kilba	427	55	13.0
Mumuye	440	31	7.4
Jukun	432	45	10.7
Totals	1,299	131	10.3

Source: Compiled by author

Participation Measured by Talking/Commenting in a Dispute Session

Another way one could attempt measuring degree of participation by individuals in a justice process is by narrowing analysis to those who are actually present at the scene of a dispute settlement, and calculating the frequency of talks/comment made by those individuals during the dispute session. To accomplish this second task, each time an individual talked or passed a comment in an on-going dispute session, one entry was made into one of the seven categories of persons (as specified in Table 2 below) which best described him/her. The category 'Other people' in Table 2 below, refers to all the people who were supposedly neutral audience, and therefore representing the wider population of their local areas. But ironically, out of the whole 217 entries made, only 16 fell under this category, which means only 7.4% participation for the wider population. Again, it is most proper to say here that almost all the surveyed rural population of Kilba, Mumuye and Jukun did not participate in dispute settlement processes of their respective local communities. Even if one narrows the analysis to just the population at the disputes settlement scenes, and also include the relatives of the disputants among the 'Other people' category, the situation improves to only 43 entries, which is 19.8% participation. Thus, the situation still remains true that it cannot be said that there was full participation by the people. More

so, if we realised that the other people in this new sense is still the majority in terms of population of those that attended at most one dispute session.[10]

Table 2: Frequencies and Percentages of Talks/Comments made by Categories of Persons at Disputes Settlement Scenes in Kilba, Mumuye and Jukun Rural Communities

Categories of Persons present at a Dispute Scene	Frequencies and Percentages of Talks during a Dispute Session in Kilba, Mumuye and Jukun			Row Total and Column %
	Kilba	Mumuye	Jukun	
Dispute Settlers	30	32	31	93
	32.3	34.4	33.3	42.9
	49.2	49.2	34.1	
Co-dispute Settlers	4		9	13
	30.8	-	69.2	6.0
	6.6		9.9	
Complainant	10	16	7	33
	30.3	48.5	21.2	15.2
	16.4	24.6	7.7	
Defendants	9	11	15	35
	25.7	31.4	42.9	16.3
	14.6	16.9	16.5	
Relatives of the Complainant			12	12
	-	-	100.0	5.5
			13.2	
Relatives of the Defendant	8		7	15
	53.3	-	46.7	6.9
	13.1		7.7	
Other People		6	10	16
	-	37.5	62.5	7.4
		9.2	11.0	
Column Totals	61	65	91	217
	28.1	30.0	41.9	100.0

Note: The top figure in a cell is the cell count, the middle the row percent, the bottom the column percent.

Source: Compiled by author

10 Out of 55, 31 and 45 people that attended at most one dispute session in Kilba, Mumuye and Jukun respectively, 48, 25 and 36 of them were 'Other People' in this new sense.

Although participation was more widespread in Jukun than in Kilba, and in Kilba than in Mumuye, the persons who clearly dominated dispute settlement processes in all the three rural communities were the dispute settlers and their assistants (co-dispute settlers). A total of 106 entries were made for them, which is nearly half (48.9%) of the whole 217 entries made. This too is contrary to what the protagonists of informal justice believe to be the characteristic of informal process of justice.

Also from the Table 2 above we cannot say that disputants participated fully enough in settling their disputes unless we consider their relatives as disputants as well. In fact, from our observation of the manner of participation in dispute settlements by the disputants' relatives (where they participated at all), we would rather regard them as representing and guiding the disputants. In other words, it appears that in six of the eight dispute settlements (four each from Kilba and Jukun) observed, the senior relatives of disputants played the role of the lawyers to their junior relatives. It should, however, be quickly pointed out here that in Mumuye, no disputant was represented by a relative in any of the four dispute settlements observed. There appeared to be three good explanations for this. First, two of the settlements observed were virtually uncontested. Secondly, one of the settlements did not involve a third party; disputants tried to settle it by themselves. Finally, in the dispute involving wife-abduction plus adultery, not even a single relative of the disputants was there. One possible reason being that the relatives of both were living far away from the village in which the dispute was being settled. However, it seems that the most likely reason was the relative economic independence of the disputants in this dispute. The complainant was both the eldest and the head of his household, which, as we shall see later in this paper, is to some extent still the unit of production in Mumuye. The accused on the other hand, though young and single, was making a living on carpentry independent of his father's household and hamlet. In fact, the few disputants in Kilba and Jukun, who were not represented by senior relatives were either themselves the elders/heads of their households, or persons who managed to severe their relationships with their extended families through a new economic independence.

In conclusion then, it is safe to say that, contrary to what the protagonists of informal justice thinks, disputants in Kilba, Mumuye and Jukun rural communities can neither be said to be totally unrepresented nor can their talks be said to be totally unguided. Those who participated fully in their disputes were either household heads, elders or persons who were economically independent of their extended families.

The Social Organisation of Informal Justice

The salient issue usually raised here concerns the class/status of adjudicators/dispute settlers *vis-à-vis* litigants/disputants in a court of justice. An adjudicator in a formal court is often criticised as belonging to an upper class of his community, and having less or no knowledge of the values and life experiences of the lower class litigants that daily appear before him (Cook *et al.* 1980). Thus out of touch with the ordinary realities of life in his community, a formal adjudicator is seen to treat majority of his litigants unfairly. On the contrary, an 'informal adjudicator', (i.e., a dispute settler) is said to be usually equal in status with the majority of his disputants, and therefore shares in common the values and norms of his community members (Gulliver 1977:36). It is thus assumed that the norms and values a dispute settler administers are also in the interest of everybody in the community including the disputants, and therefore cannot be unfair.

The argument that there is a status equality between a dispute settler and the majority of his disputants does not appear to be correct as far as our research amongst the Kilba, Mumuye and Jukun rural communities is concerned. First of all, in 11 of the 12 dispute settlements witnessed in these communities, dispute settlers were employed, and all of them were clearly people of higher status *vis-à-vis* the disputants that came before them. Each of them was either a chief, a titled elder or a priest/diviner (Merry 1982:30). The difference in status between these people and disputants could clearly be noticed even from the sitting arrangements during the settlement processes in 11 or 12 dispute settlements observed. In each, the disputants, their relatives and other people sat on the ground in a semi-circle facing the dispute settler who sat on a chair or a log of tree. Where titled elders were present, they too sat on the ground, but side-by-side with the dispute settler; the one next to the dispute settler in rank sitting most of the time by his right-hand side.

Secondly, according to my informants, among whom were the dispute settlers themselves, one of the most important roles of chiefs, titled elders and people of special religious status since time immemorial has been settling disputes and enforcing law and order in their communities.[11] The status of these people as the traditional elites in Africa since pre-colonial time has been recognised by Lloyd:

> The elites... in the pre-colonial period were the traditional rulers of the many kingdoms and chiefdoms..., and in many societies, ritual specialists who enjoyed high prestige and perhaps considerable power... The influence

11 The jurisdictions and powers/authorities of this class of people as dispute settlers is fully explained in Chapter 5 of my recent work (Sa'ad 1988).

> of these men has remained largely confined to their areas of traditional jurisdiction (1973:131).

Thus, the fact that dispute settlers in Kilba, Mumuye and Jukun have, since pre-colonial era, been people of higher statuses in their communities, could mean that they, or at least the informal law they have been enforcing, has also been to some degree biased in their favour. This is notwithstanding the view expressed by a privy council that: 'it is the assent of the native community that gives a custom its validity'.[12] Or as Roberts has found amongst the Kgatla people that: 'Everyone, even the chief is expected to comply with these rules (informal laws) in their everyday behaviour...' (Roberts 1979:147, supra note). To be sure, none of the dispute settlers or elders interviewed openly held the view that he was above the law of his community. The assumption about the possible bias/partiality by high status dispute settlers, or at least in the laws they enforce, is based on a number of considerations, especially in the ways the relationship between the law and the state is sometimes conceived.[13] In fact, evidences of bias/partiality in informal laws and administration regarding dispute settlements in Kilba, Mumuye and Jukun, which can be interpreted as serving some special interests of the local elites, especially the dispute settlers, abound in our recent study (Sa'ad 1988:180-186). Again because of the limitation of space, only one example can be given here; this time from the Mumuye.

The decision taken in the first dispute settlement (wife-abduction and adultery) observed among the Mumuye illustrates quite clearly the fact that the informal justice serves to some extent the interests of traditional elites as dispute settlers. In this dispute settlement, it was decided that a girl and seven goats were to be given to the complainant as compensation by the defendant's paternal family. This was enforced by *Tokwoumbo* group. Although this was decided in accordance with the Mumuye legal tradition in such disputes, the defendant's father was not happy because, according to him, his son has become a Christian, and has since declared himself independent of him and his family. In view of this, he was demanding back at least his seven goats from the dispute settler. The latter did not only refuse, but reiterated that the defendant's father would continue to be responsible for his son's bad behaviour in the locality. To know that the

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12 See also Pospisil's concept of 'social internalisation' (Pospisil 1981:270-272). Moreover, as my recent research has shown, the informal justice in Kilba, Mumuye and Jukun rural communities no longer command the 'assent' of their 'native' (local) communities (Sa'ad 1988:Chap 8).

13 This is raised in the earlier chapters of my recent study and dealt with in details in Chapter 9 of the study (Sa'ad 1988).For a general discussions on the relationship between law and the state, see, for examples, Pashukanis 1978; Chambliss *et al.* 1978.

response to the demand of the defendant's father in this dispute settlement was in the interest of the dispute settlers and the other traditional elites, we need only to realise two things. First of all, five of the seven goats were going to be shared between the authorities settling disputes in the area, namely, *Vabon* of the village area, who would take three goats, and two other priests (the Vadosuns), who would get a goat each. Secondly, the defendant's father was to remain accountable for every misbehaviour of his son because the latter was more likely to refer any dissatisfaction to the formal court than comply fully with the decisions of the informal justice. As the defendant himself revealed: 'I threaten to call the police for them whenever they threaten that *Va*[14] would eat me with witchcraft [meaning bewitch me]'.

To the consternation of the protagonists of informal justice, it should be noted here that this kind of bias in dispute settlements is not peculiar to the present-day Mumuye or Kilba and Jukun, but a phenomenon that had existed even in the pre-colonial days of Kilba, Mumuye and Jukun societies, as well as in several other pre-colonial societies in Nigeria (See for example Amadi 1982).

The Nature of the Outcome of Informal Justice Process

The salient issue here is coercion or sanction. The use of force to back up a decision reached in a justice process. Physical coercion used to be conceived as the exclusive form of legal sanction. Hoebel for example, maintained that the only condition of the existence of law is 'the legitimate use of physical coercion' and he defined a social norm as legal only:

> If its neglect or infraction is regularly met in threat or in fact, by the application of physical force by an individual or group possessing the socially recognised privilege of so acting (1954:261-228).

The acceptance of physical force such as execution, mutilation, flogging, imprisonment, etc., as the exclusive form of legal sanction has led to a denial of the existence of law in small-scale societies by some legal scholars.[15] Almost all dispute settlement in a small-scale society is seen as based on consensus; a voluntary agreement of the two parties in the dispute.

The idea of physical sanction as the *sine qua non* condition for the existence of law, has been rejected by other criminologists as absurd. Barkun (1968:64) for example writes:

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14 'Va' is a Mumuye general name for the various idols which they worship.

15 Excluding of course the author of the passage quoted above. As is rightly noted by Pospisil, Hoebel '...did not carry his stress on the physical nature of sanction to [such] an objectionable extent...' (Pospisil 1971:28).

> Coercive [meaning physical] sanctions need NOT to be the mainstay of law in as much as the vast number of social interactions seems never to invoke them or to be due to their presence. To limit law solely to instances in which sanctions are applied (a not uncommon approach) is to reduce it to social pathology.

This rejection has led Barkun along with some contemporary criminologists and the protagonist of informal justice to argue correctly that law exists in every small-scale society. But their failure to recognise that to qualify as a sanction, an action does not have to be physical but may be either economic, social, psychological, or a combination of two or all of these, has led some of them to argue wrongly that an informal justice system is sanctionless. The whole book by Barkun entitled *Law Without Sanctions* can be understood only in light of this misconception of sanctions as a legal attribute.

The main thrust of his argument in the book seems to be thus: because a small-scale society is egalitarian, and 'manifestly lacks the infrastructure [meaning legal institutions such as the courts, and professionals or powerful authorities] that sanctioned law requires', its law also is 'horizontal' [meaning not hierarchically structured] and possesses no 'conventional [meaning physical] sanctions' (Barkun 1968:65, 155). This argument does not seem to be correct as far as Kilba, Mumuye and Jukun systems of justice are concerned. We have seen in the two previous sections of this paper that authority and legal structures have been existing in these three communities. In fact, even though one may talk of a society without a central political hierarchy, one cannot think of any society without an authority structure. Levine (1960:58) puts it more cogently when he writes:

> All societies have authority structures and values concerning the allocation of authority. In stateless [meaning decentralised] societies, the proper unit for the analysis of such phenomena is not the total society, where we are likely to mistake lack of a central political hierarchy for egalitarianism, but the maximal decision-making unit (or some cohesive subgrouping within it).

Finally, during our empirical observation of the use of sanctions in Kilba, Mumuye and Jukun rural communities, sanctions were recorded in all the disputes dealt with by the dispute settlers. In fact, several sanctions were used in the same dispute settlement. Thus, as Table 3 below shows, 25 sanctions were used in only 10 dispute settlements. This means that at least two sanctions were used in each dispute. Hence, we can even maintain that there are more sanctions in informal justice than in formal one.[16] This is not

16 Only 22.0% of the 300 adjudicated cases in formal justice received up to two sanctions; that of imprisonment and fine (See Sa'ad 1988:146-152).

to argue that it is unjust for a justice system to have many sanctions at its disposal, but to emphasise that the informal justice systems examined here are not sanctionless. Thus, because of the obvious presence of the element of sanction in almost every settlement reached in a dispute settlement process, an informal system of justice can hardly be said to be an outcome of a voluntary agreement or a consensus between disputants involved.

Table 3: An Inventory of Sanctions Used in 10 Dispute Cases in Kilba, Mumuye and Jukun rural Communities

Types of Sanctions Used	The Type of Rural Community			Row Total and Column %
	Kilba	Mumuye	Jukun	
Physical	2 (5.4)	0	0	2 (8.0)
Caning/flogging	1	0	0	1
Confinement	1	0	0	1
Economic	10 (76.9)	4 (100.0)	4 (50.0)	18 (72.0)
Compensation/Damages	3	2	0	5
Gifts for Ritual to be held	0	2	2	4
Labour on a Fare	0	0	1	1
Confiscation of Property	3	0	1	4
Fine	4	0	0	4
Social	0	0	4 (50.0)	4 (16.0)
Forcible Marriage	0	0	1	1
Ceremonial Reprisand	0	0	1	1
Cessation of Offending Behaviour	0	0	2	2
Psychological	1 (7.7)	0	0	1 (4.0)
Sorcery through a Medicineman	1	0	0	1
Column Total	13 52.0	4 16.0	8 32.0	25 100.0

Note: - The top figure outside the bracket is the total for each type of sanctions used, the one in bracket is the column percent.
- 12 dispute cases were witnessed in these three communities (four from each), but only 10 are used in this table. The two missing cases are both from Mumuye. They were disposed off without convictions.

Source: Compiled by author

Other strong facts exist as evidences of the predominance of lack of consensus in Kilba, Mumuye and Jukun dispute settlements observed. The fact that in each of the dispute settlements, it was the dispute settlers alone who decided the appropriate sanction(s) is one good evidence. The need to

enforce the sanction(s) decided upon is a further evidence for the predominance of lack of consensus. This need is in turn evident in the giving of ultimatum for compliance, the threat or the fact of further sanction if ultimatum was broken, the use of search teams such as the *Tokwoumbo* among the Mumuye, the threat or the use of sorcery, etc. In fact, in Merry's paper on four small-scale societies, there were evidences that dispute settlers in their efforts to arrive at a settlement, pressurised disputants that seemed more subservient irrespective of what should be a fair (consensus) settlement (1982:17-42). What is more, the opinions of most disputants, particularly the defendants, interviewed about the outcome of their dispute settlements appear, as a recent survey has shown in detail, to rule out consensus as the dominant element in the outcome of dispute settlements in small-scale communities such as the rural Kilba, Mumuye and Jukun of Nigeria.[17] To be sure, many of the complainants were relatively satisfied with the outcome of their dispute settlements, even though they did not appear to get the outcome they would have wanted, which indicates some elements of compromise and consensus on their parts. But the defendant on the other hand, received, it appeared, almost the highest sanctions or penalties traditionally or otherwise prescribed for the offences they were convicted of, and they were apparently very dissatisfied.

Conclusion

In conclusion therefore, we can say that the concrete operation of informal justice in small-scale societies examined in the foregone sections of this paper did not, critically speaking, have most of the so-called virtues of informal justice. The analyses revealed a wide gap between the reality of informal justice in Kilba, Mumuye and Jukun rural communities and the ideals of informal justice as conceived by its advocates. First, the absence of professional lawyers and the relative proximity of the 'courts' notwithstanding, dispute settlement in Kilba, Mumuye and Jukun was not so cheap; the main reason being the gift-giving involved in each dispute process. Although the process usually started immediately a dispute was brought before dispute settlers, an 'on-the-spot' justice/settlement was not possible. To enforce a settlement was always a problem. Ultimatum after ultimatum had to be given. As a result, none of the decisions, where it was reached at all, was fully enforced immediately as the protagonists of

17 Almost all the disputants interviewed in Kilba, Mumuye and Jukun disagreed almost totally with the outcomes of their dispute settlement. The defendants in particular and/or their relatives, did not only disagreed with the settlements reached in their dispute settlements but they were totally dissatisfied with those decisions (See Sa'ad 1988:190-194).

informal justice would have expected. Many were still to be enforced, pending ultimatum, when the author left after seven months of field work.

Secondly, although people were not barred from attending the scenes of disputes settling process, only very few did attend, and they hardly talked there. Participation at the dispute settlement scenes had clearly been the preoccupation of only the disputes settlers, their assistants and the parents or senior relatives of the disputants (especially those of the defendants') in which the dispute settlers played a dominant role.

Thirdly, the dispute settlers were special status people, and the manner gifts were given and/or fines and compensations were exacted and appropriated, suggested clearly that people who benefited most (materially at least) were the disputes settling authorities.

Finally, the obvious existence of the element of imposed sanctions, and other reasons, including the opinion of most of the disputants (particularly the defendants) interviewed, appear to rule out consensus as the dominant element in the outcome of dispute settlements examined in this study.

Clearly therefore, informal justice in Kilba, Mumuye and Jukun of Nigeria is lacking in most of the virtues propagated as inherently informal. This could be explained as due to the socio-economic context within which the informal justice in these societies operate as at now, which is an amalgam of pre-capitalist and capitalist modes and relations of production. However, it is not the intention of this paper to dwell on this.[18]

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18 For a detailed discussion of the relationship between informal law and justice and mode and relations of production in Kilba, Mumuye and Jukun societies see Sa'ad (1988 and 1990).

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