

UNIVERSITY OF ZULULAND

**A COMPARATIVE STUDY OF JUSTICE DISPENSATION IN OYO AND ZULU
TRADITIONAL ADMINISTRATIVE STRUCTURES**

AJAYI AYOBAMI OLUTAYO

BA, M A, (AFRICAN HSTORY) PGDE, M.ED (SOCIAL STUDIES)

(STUDENT NO 201548874)

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BY

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Promoter: Dr. Maxwell, Z. Shamase

External Examiners: Proffessor Felix Kiruthu (Kenyatta University, Kenya)

Professor Johan De Villiers (Stellenbosch)

Professor Syed Lasna Kabir (University of Dhaka, Bangladesh)

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TABLE OF CONTENTS

1	LIST OF FIGURE	vi
2	LIST OF TABLES	vii
3	LIST OF ABRIVATIONS	viii
4	DECLARATION	ix
5	DEDICATION	x
6	ACKNOWLEDGEMENT	xi
7	ABSTRACT	xii
8	GLOSASARY OF TERMS	xiii
CHAPTER ONE: CONTEXT AND OUTLINE OF THE STUDY		
1.1	Introduction	1
1.2	Thoretical Framework	2
1.2.1	Administrative Theory	2
1.2.2	Scope and Domain of Administration	3
1.2.3	Leadership Theory	4
1.2.3.1	Trait Approach	4
1.2.3.2	Leadership Approach	5
1.2.3.3	Coinsgency approach	5
1.2.3.4	Charistimatic leadership approach	5
1.2.3.5	Transsational Leadership approach	5
1.2.3.6	Transformational leadership	5
1.3	Literature Review	6
1.4	Problem Statement	12
1.5	Aim of the Study	13
1.6	Objectives of the Study	13
1.7	Research Questions	13
1.8	Intended Contribution to Knowledge	14
1.9	Research Methodology	14
1.9.1	Study Population	15
1.9.2	Sample size	15
1.9.3	Procedure	16
1.9.4	Data collection	17
1.9.5	Data analysis	17

CHAPTER TWO: A THEORETICAL BACKGROUND OF COMPARATIVE HISTORICAL ANALYSIS

2.1 Introduction	18
2.2 Tools for studying necessary and sufficient causation	19
2.2.1 Overcoming Skepticism	19
2.2.2 Specific Method for analysing necessary and Sufficiency Causes	22
2.3 Tools for study tempora processes	25
2.3.1 Process Analysis	26
2.3.2 Sequence and Duration Argument	29
2.4 Tools for inductive Inference	31
2.4.1 Concept Analysis	32
2.4.2 Measurement Validity	35
2.5 Conclusion	36

CHAPTER THREE: METHODOLOGY OF THE STUDY

3.1 Introduction	38
3.2 Philosophical Paradigm	39
3.3 Research Method and Approach	43
3.4 Research Design	46
3.4.1 Survey Research	48
3.4.2 Target Population	49
3.4.3 Accessible Population	50
3.4.4 Sampling Procedure and Methods	50
3.4.5 Sampling Technique	51
3.4.6 Purposive Sampling	51

3.4.7 Sampling Random	52
3.4.8 Sampling Frame	53
3.4.9 Sampling Size	53
3.5 Data Collection	55
3.5.1 Questionnaire	55
3.5.2 Questionnaire Construction	55
3.5.3 Interview	57
3.5.4 Trangulation	57
3.5.5 Pilot Study	59
3.5.6 Validity of Instrument	59
3.5.7 Descriptive Statistical Analysis	59
3.5.8 Ethical Considerations	60
3.5.9 Conclusion	61
CHAPTER FOUR: PRINCIPLES OF OYO AND ZULU	
ADMINISTRATIVE STRUCTURE AND OPERATIONS	
4.1 Introduction	62
4.2 Historical Background of Oyo and Zulu People	62
4.3 The Origin of Yoruba	64
4.4 The Origin of Zulu	66
4.5 Principle of Separation of Power in Oyo and Zulu Administrations	72
4.5.1 The Alaafin	73
4.5.2 The Oyo Messi	74
4.5.3 The Ogboni	76
4.5.4 The Ezzo or Millity	78

4.5.5 Royal and Palace Officials	79
4.5.6 The Illaris	81
4.6 Judicial Independence in Oyo and Zulu Empires	85
4.7 Right to Justics among the people in Oyo and Zulu	92
4.8 Fair Process in the dispensation of Justice	95
4.9 Conclusion	102
CHAPTER FIVE:	
5.1 Introduction	104
5.2 Traditional Judicial Structure of Oyo and Zulus	105
5.3 Chieftaintship between Oyo and Zulu	113
5.4 Conclusion	122
CHAPTER SIX: DATA PRESENTATION AND ANALYSIS	
6.1 Introduction	123
6.2 Respondents Demographic Profiles	124
6.2.1 Distribution of respondents (Chiefs, Place official Proffessional Historians)	125
6.2.2 Distribution of Respondents according to their Occupation in Oyo and Zulu	126
6.2.3 Distribution of Respondents by their Gender	126
6.2.4 Distribution of Respondnets by Age in Oyo and Zulu	127
6.2.5 Distribution of Respondents by Educational Qualification in Oyo and Zulu	127
6.3 Findings Based on Research Questions	128
6.4 Interview Report	134
6.4.1 Perception of the Respondents on the customary court process in Oyo and Zulu Judicial	135
6.4.2 Awareness on Courtomary litigation Process among Oyo and Zulu Judicial	135
6.4.3 Foreign Influence on Traditional Administrative Structures	

in Oyo and Zulu	135
6.4.4 Justics Dispensation in Oyo and Zulu Administrative systems	136
6.4.5 Public Perception on Doctrine of separation of Power in Oyo and Zulu	136
6.5 Conclussion	137
CHAPTER SEVEN: FINDINGS, INTERPRETATION AND EVALUATION OF JUSTICS DISPENSATION IN OYO AND ZULU TRADITIONAL ADMINISTRATIVE STRUCTURES	
7.1 Introduction	138
7.2 Distribution of Respondents by Gender in Oyo and Zulu Empires	139
7.3 Distribution of Respondents in Oyo and Zulu by Age and Educational Qualification	140
7.4 Public Perception of the Courtomary court Process in Oyo and Zulu Judicial Structure	141
7.5 Awareness on Courtomary Litigation Process among Oyo and Zulu Judicial structures	143
7.6 Awarnes of European Contact on Administrative structures in Oyo and Zulu Empires	147
7.7 Justice Dispensation in Oyo and Zulu Traditional Adminstrative Systems	153
7.8 Public Perception on Doctrine of Separation of Power in Oyo and Zulu	166
7.9 Conclusion	170
GENERAL CONCLUSION	238
SOURCE LIST	244
Appendix i	293
Appendix ii	310
Appendix iii	325
Appendix iv	343
Appendix v	353
Appendix vi	354

LIST OF FIGURES

Figure 1: Map of Old Oyo Empire, showing different kingdom in Yorubaland	101
Figure 2: Map showing the major cities in Yorubaland	105
Figure 3: Image of Shaka the Zulu	107
Figure 4: Map showing the major cities in Zululand	110
Figure 5: Showing the administrative and defense system of the Alaafin	127
Figure 6: Diagram showing the interface of the civil establishment in the Oyo Empire	179
Figure 7: A diagram showing the administrative and judicial unit of the Zulu Empire	181
Figure 8: Distribution of respondents in Oyo and Zulu	183
Figure 9: Distribution of respondents by their gender	188
Figure 10: Qualifications of both respondents in Oyo and Zulu	220

List of Tables

Table 1: The occupation of respondents, skilled and unskilled	112
Table 2: Distribution of respondents' age in Oyo and Zulu respectively	121
Table 3: Perception of the Customary Court process in Oyo and Zulu Judicial Structures	180
Table 4: Customary Litigation Process among Oyo and Zulu Judicial Structures	181
Table 5: European Contact on Administrative Structure in Oyo and Zulu Empires	184
Table 6: Justice Dispensation in Oyo and Zulu Traditional Administrative System	185
Table 7: Public Perception on Doctrine of Separation of Power in Oyo and Zulu	187

LIST OF ABBREVIATIONS

ADR	Alternative Dispute Resolution
AG	Action Group
AP	Adjudication Process
BAE	Black Administration Edict
CU	Customary Court
CC	Chief in Court
COGTA	Cooperative Government and Traditional Affairs
FGN	Federal Government Nigeria
FMJ	Federal Ministry of Justice
JC	Judicial Commission
KZN	Kwa-Zulu-Natal
KZNA	Kwa-Zulu-Natal Act
KZNDJ	Kwa-Zulu-Natal Department of Justice
KZCH	Kwa-Zulu- Chief Headmen
LP	Litigation Process
LG	Local Government
NC	Native Court
NO	Native Ordinance
OYSMJ	Oyo State Ministry of Justice

DECLARATION

I declare that this research study, ‘A comparative study of justice dispensation in Oyo and Zulu traditional administrative structures’ is my original research work. This thesis has not been submitted to any other University for the award of any other degree. All data and information used in this research work has been duly acknowledged in the text, references and appendixes.

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Ajayi, Ayobami Olutayo

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Date

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Dr. .M. Z. Shamase

Promoter / Supervisor
Department of History,
University of Zululand, KwaDlangezwa

.....

Date

DEDICATION

This thesis is dedicated to almighty God. To him alone be all the glory, the one who knows my beginning from the day I was conceived to the end Elshadai, for granting me this opportunity and made this Ph.D programme a huge success.

I also dedicate this thesis to my jewel inestimable value, my love, and my friend a woman with whom I share my heart and the mother of my covenant children Khafilat Eyitayo Adenike Ajayi and to my lovely angels AnjolaOluwa Esther Ajayi and Olasubomi Emmanuel Ajayi for their understanding, prayers and Support while I was in South Africa.

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ABSTRACT

The study compared justice dispensation in Oyo and Zulu traditional administrative structures. The specific objectives of the study were to explain, the purpose of customary courts in dispute resolution, the courts processes, litigation procedures, the impact of foreign contact on traditional and judicial administration, justice dispensation, separation of power were all examined. The study investigate the justice dispensation in customary courts among Oyo people of western Nigeria and Zulu people of KwaZulu-Natal, South Africa. The study adopted the pragmatist research paradigm which combines both qualitative and quantitative research methods, the study largely used a survey design approach, the sample of the study was drawn the chiefs, palace officials, professional historians, and knowledgeable people on the research topic. The chiefs were interviewed because they were actively involved in justice dispensation in customary courts. Because of their experience over years in peace keeping and conflict settlement among the people of Africa. The random sampling technique was used to select the respondents for the study. The questionnaire was administered to the 120 respondents, 85 (70.83%) of whom returned the questionnaire, interviewed were also conducted with the chiefs in Oyo and Zulu. The quantitative aspect of the study was analysed using descriptive simple percentage methods, while the qualitative aspect of the data was analysed through the use of qualitative contents analysis. The findings revealed that the social demographic variables such as age, years, experience are were all important in justice dispensation in customary courts. The findings also revealed that there were due processes in customary courts administration before hearing will take place, chiefs are at liberty not only to cross-examine witnesses but also to ensure that the parties are fairly treated. The customary courts provided cheap, informal, flexible and speedy access to justice. The study now conclude that procedural and evidentiary approaches is to promote reconciliation and finding a mutually and acceptable solution to the dispute in our societies.

Key words: Customary courts, Procedures, Justice Dispensation, Traditional chiefs, Plaintiff,

GLOSSARY OF TERMS

ALAAFIN: The Oba (meaning ‘King’ in the Yoruba language) in Oyo, who was referred to as Alaafin of Oyo (Alaafin means owner of the palace in Yoruba) was the head of the empire and supreme overlord of the people.

AMABUTHO: Soldiers or military regiments.

ARE-ONA KAKANFO: Overall military commander of the Empire or Generalissimo.

CHIEFDOM: Is a form of hierarchical political organisation usually based on kingship, under an independent or semi-independent ruler or a position that can be occupied through the ascribed status of the occupant.

EMPIRE: A large political territory under the authority of a king or emperor.

ESO: Soldiers or military in Yoruba land.

INDUNA/ IZIDUNA: Are headmen, the leaders acting as assistants of amakhosi. They operate over izigodi, the administrative sub-categories of amakhosi of the chiefdoms (Empire)

INKOSI /AMAKHOSI: Refers to senior traditional leaders, who is usually male and commonly identified through a combination of kingship roles in KwaZulu-Natal.

ISILO: Refers to the king (or paramount chief) in Zulu traditional structure.

JUSTICE DISPENSATION: Refers to the administration of a moral ideal that the law seeks to uphold in the protection of rights and punishment of wrongs.

KINGDOM: A territory or community having monarchical form of government headed by a king, but smaller than empire.

NUPE AND BORGU: Border kingdoms of Oyo Ile in the north central of Nigeria.

OBA: meaning King in Yorubaland.

OGBONI: Secret cult of the earth.

OYOMESI: The traditional council in Oyo Empire consists of seven members.

OYO: Is a town, in the southwestern Nigeria, founded by Oranmiyan, the capital of Oyo Empire.

PALACE OFFICIALS: Ona-Efa (Eunuch of the middle), Otun-Efa (Eunuch of the right), Osi-Efa (Eunuch of the left). Ona-Efa also called Iwefa.

TRADITIONAL ADMINISTRATIVE STRUCTURE: Refer to indigenous African institutions that facilitated the operation of justice dispensation in Oyo and Zulu societies.

YORUBA: Is a tribe, refers to a member of a Negroid people of West Africa, living chiefly in the coastal regions of Southwestern Nigeria, consists part of Benin and Togo.

ZULU: Refer to the genealogically heterogeneous groups of lineages which recognized the rule of Senzangakhona, and later Shaka. Zulu is also used in this work to refer to those lineages which claimed to be directly connected to the line of Zulu kings, and they occupied what is known today as Zulu empires Natal Province.

CHAPTER ONE

1.1 Introduction

Though justice, the vital aspect of the law, facilitates stability in the society, it is difficult to define exactly. Each society has a certain notion of justice based on the ideals of that society. The most common idea has been that of fairness of treatment which, in the administration of justice, includes treating similar cases alike. This idea of justice is founded on the Gesellschaft principles and ideals. The concept of justice in African society was exhibited by the Gemeinschaft concept which stresses more on peace-keeping functions of law rather than the normal procedure and establishment of a universal rule of precedent.

Several communities have established certain bureaucratic safeguards and doctrines of ensuring minimum justice by judicial tribunals¹. These differ from community to community as an outcome of sociological and political developments in each society. The customary courts in Oyo and Zulu empires signify the traditional judicial mechanism. Even though they have been influenced by western ideas and practices, their mode of operation remains greatly unchanged. Most of the procedural practices evolved in the west mostly do not relate to these courts, owing largely to the nature of the society from which they emanated.

Chiefs usually do not act as individuals in the administration of justice, but work collectively with other chiefs in courts who then brainstorm the presentation of the case before they seek opinions and before the judgment will be given. These chiefs have the right not only to cross-examine witnesses but also to ensure that the disputants are fairly treated.² Despite these traditional checks, abnormalities do occur. Although the abnormalities in customary courts remain minimal in Oyo and Zulu societies, because the litigation processes are collectively done together by the chiefs and provide inexpensive

¹ J. Stuart. uBaxoxele (Incwadi vezindaba za Bantu ba KwaZulu, nb Ba se Natal): London, Boston, 1926, pp.7.

² .W. G. Stafford. &E. Franklin. Principles of Native Law and the Natal Code. Pietermaritzburg: Shuter & Shooter 1956, Pp.118--121.

services for the grassroot people to access justice. The procedures and approaches emphasize resolution and finding a commonly acceptable solution to the dispute which are desirable goals even in modern society.

Guidelines have been introduced which have transformed the native procedural approach. It is however specified that the process should harmonise the native law of the tribe concerned. Some of these guidelines modify native law and others are opposing it. In some cases chiefs do not comply with these guidelines. Although the method of operation of some customary courts

is unacceptable as they compare unfavourably with western courts, these are in the minority in Oyo and KwaZulu-Natal. Customary courts consequently still enjoy a degree of legitimacy so that abolishing them without providing a viable replacement would be a premature attempt. Such approaches in Africa were unsuccessful because customary courts are grassroots courts in Africa that provide quick access to justice for the rural people who find it difficult to access justice in modern courts.³

Though customary courts in Oyo and Zulu societies still have a role to play in the administration of justice, their method of operation should be upgraded, not with the aim of making them pseudo magistrates, but with the aim of encouraging effectiveness thereby instilling the confidence of the public in their activities. Proper education and training as well as continued in-service training could be achieved by the customary courts' chiefs.

1.2 Theoretical Framework

This study will employ administrative and leadership theory. This is because it is the most appropriate theory for this research.

³ .J. BleazardJ. S.Budlender. H. Corder. M. Kidd.P. Maree. M. Murcott. &E. Webber. *Administrative Justice in Southern Africa: An Introduction*. Cape Town: OUP, 2015, Pp 89-91.

1.2.1 Administrative Theory:

Administrative theory deals with administrative structures and their operations. Administration is an aspect of governmental activity which is very old. It is as old as human history; in European languages the term Public Administration began to be used during the seventeenth century to separate the absolute monarch's administration of public affairs from the management of his private household.⁴ It was a period when the church was separate from the state and the government was superimposed on all other societal institutions within a definite territory. In every society, there are some activities like the maintenance of law and order and defense which have to be undertaken in the public interest. Public administration as a system of organisation is only involved in performance of those activities. Political decision makers set the goals for political systems; it is the business of the public administrator to work for the realization of these goals. At the present stage of evolution of man, administration has proved to be indispensable in the administration of state.⁵

Administration is a professional academic field. It is important in dealing with the machinery and procedures of government activities. Administration can be defined as a cooperative human effort towards achieving common objectives or goals. Thus, administration will be found in various organizational settings such as business firms, hospitals, institutions of higher learning and government departments among others.⁶

As a branch of this more generic concept, different types of administration operate within a political setting. It is a means by which policy decisions were made within the political class and is meant to be carried out. Administrative decision making entails many things, such as planning the work to be done, formulating objectives and goals for the organizations and to gain public support and funds for government programmes,

⁴ R. Wettenhall. "Corporations and Corporatisation: An Administrative History Perspective." *Public Law Review*, Sydney 5(1), 7-20

⁵ C. J. Fox. & H. T. Miller. *Postmodern public administration: Bureaucracy, modernity, and postmodernity*. Tuscaloosa, Alabama: University of Alabama Press, 1995, P.129.

⁶ A. Herbert. *Administrative Behaviour: A study of A Decision-Making Process in Administrative Organisation* (4th Ed.) New York: Free Press, 1997, P 115

establishing and reviving organizations, directing and supervising employees, providing leadership, determining work methods and procedures, exercising controls, communicating and receiving communication, appraising performance, and other functions performed by government executives and supervisors. It is the act on part of the government and the ways in which the objectives and goals of the government are realised.

1.2.2 Scope and Domain of Administration

Administration is the complex of governmental activities that are undertaken in the public interest at different levels such as the central, state, or provincial and local levels. The administration aims at the systematic study of these activities. Government, as political authority, is the major regulator of social life, with the advent of democracy and the concept of the welfare state: the governmental activities have increased by leaps and bounds. The historical movement has thus, been from regulation of service and welfare.⁷ Since the government has come to have widespread influence and control over general life, its organization is a basis of authority where its functions, finance and impacts on society are handled by expertise from the government.

The area chosen by general administration has been the function of executive organ of the government; this really means a study of bureaucracy, its structures, functions and organisation. But the organ of government such as legislative and judiciary has also been found useful in general administration analyses. The policy performing impetus comes from legislature and legislative committees very often have undertaken important and vigilance control functions. Similarly the judiciary often adjudicates on quasi-judicial issues and passes important judgments affecting executive operations. Judicial administration itself forms a major component of general administration. Thus, the study of general administration is basically focused on the executive no doubt; but a proper

⁷R. Wettenhallr & I. Thynne. (eds.) "Symposium on Turn-of-the-century Trends and Future Prospects in *Public Enterprise and Privatization: Contexts, Structures and Dynamics*." Public Finance and Management (U.S. Southern Public Administration Education Foundation) 2 (1).

understanding of general administration is not possible without taking into account the legislative and judicial administration as well.

1.2.2 Leadership Theory:

1.2.2.1 Trait approach

Trait theory of leadership accepts as true that some people are born or made with certain traits or qualities that will make them excel in leadership roles.⁸ That is, certain potentials such as intelligence, sense of responsibility, creativity, and other principles puts anyone in the shoes of a good leader. Allport, an American psychologist “identifies almost 18,000 English personality-relevant terms”, the trait theory of leadership is concentrated on examining mental, physical, and social characteristics in others to gain more understanding of what characteristic or the combination of characteristics that are known among leaders. There are many things lacking from the trait leadership theory, however, from a psychology of personalities approach, Allport’s studies are among the pioneer attempts and have encouraged the study of leadership behavioural methods.

1.2.2.2 Leadership approach

Likert’s theory of leadership recognized that leaders might be usefully described in terms of what they actually do (behavioural style), rather than just the traits that they possess. The underlying distinction in the behavioural style approach is between two different styles of leadership: task-orientation (where the leader is concerned with task related activities, such as allocating tasks and setting deadlines); and relationship-orientation (where the leader is concerned with the subordinates, such as: being friendly and approachable, developing communication and encouraging participation).⁹ The leadership theories divided the leadership into two groupings, those that are disturbed with the tasks and those apprehensive with people.

⁸ .H, Janet, M, Meredith & V, Bernadette. *Leadership, Discourse and Ethnicity*. New York: Oxford University Press, 2011, P184.

⁹ .M. Manuel & N.K. Rabindra. *Ethical Leadership*. Maidenhead England: Open University Press, 2007, Pp.212-214.

1.2.2.3 Contingency approach

According to Robbins, the contingency leadership theory opposes that there is only one way of leading and that all leadership approaches would be founded on optimistic conditions, which specifies that there are assured individuals who achieve at the extreme level in certain places; but at least perform when taken out of their division. To a certain extent, contingency leadership models are extensions of the trait theory, in the sense that human traits are related to the situation in which the leaders demonstrate their leadership. It is generally accepted within the contingency theories that leaders are willing to exercise their leadership when they feel that their followers will be responsive.

1.2.2.4 Charismatic Leadership approach

Howell & Shamir, view that the charismatic leadership approach is rooted in the personal and behavioural characteristics of the leader. Such leaders are able to inspire and enthuse their subordinates through their articulation of an organizational vision. Subordinates identify with the vision and accept the leader's values as their own.¹⁰ Charismatic leaders get the support of their followers based on their perceptions of the leader's behavior. Charismatic leaders are able to motivate subordinates to produce superior performance without the use of formal authority or power. In some respects, given that charisma is conceptualized as a personal characteristic, leadership might be viewed as a revival of the trait approach to leadership. Followers' emotional responses have significant influence on the perception of a leader as charismatic, for instance where followers experience higher levels of arousal, they are more likely to rate leaders as being charismatic. There is evidence which shows that the followers' characteristics may also influence the effectiveness of charismatic leadership. External factors, such as crisis, can prompt organizations to select charismatic leaders.

1.2.2.5 Transactional Leadership approach

¹⁰ Traditional Leaders Theories ://http://www.le.ac.uk/oerresources/psychology/organizing_06htm Assessed Online 2/3/2016

According to Bass, transactional theories, also known as exchange theories of leadership, are characterized by a transaction made between leaders and the followers. In fact, the theory values an optimistic and jointly beneficial association.¹¹ For the transactional theories to be active and as a result have inspired value, the leader must find a will to align to suitably reward (or punish) his follower, for performing a leader-assigned task. In other words, transactional leaders are more effective when they develop a mutual supporting environment, for each organizational goals are in sync. The transactional theorists state that somebody in general is seeking to make the most of pleasurable experiences and to reduce un-pleasurable experiences. We are more likely to associate ourselves with persons that add to our strengths.

1.2.2.6 Transformational Leadership

Great Man, view's transformational leadership theory as a procedure by which an individual relates with others and is able to make a concrete relationship that results in a high proportion of trust that will later result in proliferation of motivation, both intrinsic and extrinsic, in both leaders and supporters.¹² The essence of transformational theories is that leaders change their followers through their inspirational nature and charismatic personalities. Rules and guidelines are flexible, guided by group norms. These features provide a sense of awareness and belonging for the supporters as they can simply recognise with leaders of good philosophies.

1.3 Literature Review

The traditional administration in pre-colonial Africa generally, and between Oyo and the Zulu has attracted many scholars, and there is a plethora of existing literature that exists on Oyo and Zulu administrative structures and operations. One example is Jeff Guy, a known historian in his book titled *DESTRUCTION OF THE ZULU KINGDOM: THE CIVIL WAR IN ZULULAND 1879-1884*, he talks on Zulu administrative structures and operations in

¹¹.O, K.Nemeri.*Thinking About Leadership*. Princeton, N.J: Princeto University Press, 2010, Pp.117-119.

¹². E, Robert.*Political Leadership in Liberal Democracies*. London: Macmillan Press, 1995, P.168.

the pre-Shakan period. He contends that the king along with the Izikhulu, the great ones of the Empire, represented the chiefdoms incorporated by the founder into the Empire.¹³ The king with the Izikhulu comprised the Ibandla, the highest council of the state, and without the Izikhulu the king could make no decisions on national importance. The statuses of the Izikhulu depended primarily on birth and were seen as the living representatives of the dominant lineages of the chiefdoms of the Empire. The control and the administration of the Empire depended on the king and the work of a vast number of state officials of differing rank and status. These were the Iziduna, (sing induna) of the Empire, the army commander, regimental officers, personal attendants to the king, messengers, and tribute collectors among others. State power was devolved from the king to Izikhulu, to the head of administrative areas Iziduna, within the Empire, at the district level traditional chiefs or Amakhosi, the administrative head, or Iziduna, messengers and personal attendants to the chiefs and the local affairs being the responsibility of the resident homestead-heads.

Atanda, *AN INTRODUCTION TO YORUBA HISTORY* writes on Yoruba traditional, political administration. He gives information on various types of Yoruba administrative structures and operations. This was based on a centralized system, and explains the functions of the king, chiefs and expected behaviour from the people.¹⁴ He sheds more light on the Oyo political administration structures, the functions of Oyo-mesi, the Ogboni and the Alaafin and how this organ served as a check to others and also reiterates that any Oyo king could not rule ruthlessly or be despotic because there are ways of checking the Oba but it fails to discuss how the Oyo Empire became so important in Yoruba politics in the pre-colonial period.

¹³ G, Jeff. *Destruction of Zulu Kingdom "The Civil War in Zululand 1879-1884*. Pietermaritzburg, University of Kwa-Zulu Natal Press, 1994, Pp.55-67.

¹⁴ J, A. Atanda *The Changing Status of the Alaafin of Oyo under Colonial Rule*. In Crowder, Micheal, and Ikime, O. (eds.) *West African Chiefs*, Vol1, No2, Pp52-55 United Kingdom Group Ltd, 1970.Pp.28-40.

Shamase, in *Zulu Potentates* - from the earliest to Zwelithini KaBhekuzulu, traces the genealogy and lives of the eight Zulu kings to the present one.¹⁵ He deals with various issues surrounding their reigns. He also discusses the political organizations of the pre-colonial period in Zululand to the present. He argues that the Isilo is the head of the administration, and the highest authority in the Empire. Next to him were the Amakhosi, the traditional chiefs or leaders formed the traditional council of the Empire. Their function at the council level is to discuss important state issues, followed by Iziduna, the administrative officers and the homestead leaders. The political organization that operates at the Empire level were the same at the district and the local level.

Lloyd points out the significance of Oyo political structures in (ed.) S.O. Biobaku's *SOURCES OF YORUBA HISTORY* and states that Alaafin was the head of political administrative structures and his principal advisers were the Oyomesi. The Oyomesi were therefore, individually in charge of quarters, the smaller descent groups of which often held a chieftaincy title in respect of the quarter. In addition, the Ogboni was an active association mediating between the Alaafin and Oyomesi in case there were crises between them.¹⁶ He discusses the administrative system, and the administrative staff whom were independent of the chiefs and descent group heads. The staff was headed by three titled eunuchs, the iwefa, whose spheres of competence were respectively religious, judicial, and political. Their titles were ona efa, otun efa, osi efa, and these divisions were of the palace organization of the Oyo Empire.

Khunuou gives a brief exposition of the impact which the pre-colonial and colonial administration had on institutions of traditional leadership; kings are the political and

¹⁵ M.Z. Shamase *Potentates from the Earliest to Zwelithini KaBhekuzulu*. Durban, S.M. Publication, 1996, Pp. 7-28.

¹⁶ P.O. Olatunbosun *History of West Africa from AD 1000 to the Present Day*. Ilesa, Fatiregun Press, 1981, Pp. 123-148.

administrative centre of governance in traditional communities.¹⁷ The institution of traditional leadership was the form of government with the highest authority. The leadership styles of monopoly of traditional leaders changed when the colonial government introduced their authority at the expense of traditional ruler's authorities.

Johnson, in *THE HISTORY OF THE YORUBAS* provides an extensive discussion on Yoruba history from the earliest times to the beginning of the British protectorate. He traced the origin of Oyo to Oranmiyan, the son Oduduwa, the founder of the Yoruba. He delves into the traditional administration of Oyo, the functions of Oyo-mesi, Ogboni, the eunuchs called iwefa, and the Ilari. He discusses the role of the Alaafin, in terms of Oyo administration, even beyond the Yoruba nation.¹⁸ Johnson posits further on the judiciary system of Oyo in the early period and also explores the political structure and hierarchy of traditional chiefs. He also describes the succession process of traditional chieftaincy in Oyo, the political administration in Oyo was a centralized system, and this is prevalent in all the Yoruba towns. There is no aspect of Yoruba history that Johnson does not talk about. It could be argued however, that was based on a Eurocentric perspective.

Bryant writes of the socio-economic and political development of Zulu people in the pre-colonial period in his book titled the *ZULU PEOPLE AS THEY WERE BEFORE THE WHITE MAN CAME*.¹⁹ He dwells on Zulu traditional political history before 1818 and during the reign of Shaka. He posits that the Zulu people belong to the Bantustan group, and their basic political unit is "Clan". The several chiefdoms and kingdoms that made up the Empire first installed their own chiefs according to their customs and traditions as modified over time to meet social and political pressures. During Shaka's period, the great council of the state called Ibandla and the clan system ceased to exist and was replaced by Induna / Iziduna, the Amakhosi, homestead leaders, army commander, regiment officers,

¹⁷ S.F, Khunuou. *The Origin and Nature of Traditional Leadership in South Africa; A Pre-colonial Perspective*, 2012, Pp. 295-317.

¹⁸ A, Akintoye *A History of the Yoruba People*. Darkar, Senegal Amalion Publishers, 2010, Pp.229-245.

¹⁹ Bryant, A.T. *The Zulu people As They Were before the White Man Came*, South Africa, Shuter & Shooter-Pietermaritzburg, 1949, Pp. 55 -62.

tribute collectors among others. This reflected the administrative structures and operations of the Zulu empire.

Munoz, *A LIVING TRADITION Studies on Yoruba Civilisation* review the traditions and civilization of the Yoruba people. The main theme of the book is that there is no antithesis between Tradition and Modernity.²⁰ No society is entirely traditional without some adaptations to cope with the modern world. Similarly, there is no complete modern society without institutions and ideas carried over from the past. We are not only adapting to change, we also endure it. That is a useful way to understand society. Therefore his work is on the synthesis of tradition with modernity. His focus on the Yoruba, emphasises the nature of traditional Yoruba governance and politics, specifically the changing nature of the kingship and the role of the capital city of the Yoruba kingdom.

Williams, focuses on how the chieftaincy seeks to establish and maintain its political legitimacy with the local population as well as the state in the pre-colonial and post-apartheid era.²¹ Through comparative case studies, he analyses specifically how chieftaincy and local populace have negotiated the introduction of specific norms, rules, processes, and institutions that are fundamental policies of traditional administration. Through a framework that Williams called the multiple legitimacy framework, he seeks to show how the chieftaincy has sought to maintain its authority in the midst of political changes. Chieftaincies are still a central figure in the lives of rural communities in South Africa.

Clarke in *TRAVELS EXPLORATION in YORUBA LAND* was a Baptist Christian missionary who served under Bowen in Nigeria. His travel experiences throughout the Yoruba land as a missionary influenced his write ups. Clarke analyzed the environment, political and cultural organization of the Yoruba's on the basis of information and

²⁰ L. J. Munoz. *A Living Tradition Studies on Yoruba Civilization*. Ibadan, Bookcraft Publisher, Pp. 2003, Pp. 63-69.

²¹ J.M.A, Williams Chieftaincy, the State and Democracy, Political Legitimacy in Post-Apartheid South Africa, 2011, Pp. 1-18.

experience which the author gained during his travels.²² The dominant and significant feature of both parts is Clarke's reaction to the preconceived and erroneous idea commonly held in his days in Europe and America about Africa and Africans. Such ideas as Africa being no more than barbarians, savages, uncivilized people, etc., which are found in a number of books written by European travelers and missionaries to Africa are too well known to require elaboration here. Clarke's confession was imbued with those sentiments concerning Africa. The old Oyo Empire, whose rising influence began to be felt in the fourteenth and early fifteenth century, was just one of many kingdoms founded by Yoruba people. Oyo controlled a strategic position in the economy and politics of olden days. In terms of extent, it was the largest, incorporating within its borders some of the Yoruba kingdoms like the Egba and Egbado, as well as the Aja kingdom of Dahomey. Besides, it was the most powerful in Yoruba land being highly respected for its military power and sound administrative system. The book gives an insight in the territorial expansion, and socio-political activities of the empire.

Talia, M. & Craig C, view traditional leadership in the democratic government of South Africa as being important and needing to be recognized. They also look at the relevance of South African traditional leadership in contemporary politics.²³ One cannot overlook the social role the traditional leaders play within the rural communities and this is seen to be very useful in helping the public perception with regards to political affairs. The factor that douses the tension of relevancy during the European incursion in Africa with all the challenges the traditional institution faced in Africa, yet there is no substitute for the institutions and they still remain relevant in the pre-colonial period in Africa.

Babayemi, in his book titled *Topics in Oyo History*, traces Oyo tradition of origin and the relationship between the Alaafin and his Chiefs.²⁴ He discusses the tradition and function

²² W.H, Clarke *Travels and Exploration in Yoruba land*. 1956, Pp, 204-228.

²³ M.Talia & C.Craig, *Traditional Leadership in Democratic South Africa*. University of Kwa-Zulu Natal, Pietermaritzburg, South Africa, 2007, Pp.5-12.

²⁴S.O, Babayemi. *Topics on Oyo Histor*. Lagos, Lichfield Publisher, 1991, Pp. 47-68.

of the Egugun cult among Oyo Yoruba and Bere festival in Oyo. He also sheds light on intergroup relations which made Oyo polity develop over time. He concludes by saying the palace organization of Oyo is so unique and each palace officer has his or her own roles and functions to perform in palace administration.

Bleeker's *THE ZULU OF SOUTH AFRICA* is another valuable piece of material for the account of the origin of Zulu people.²⁵ She discusses further on Zulu traditional political administration in the pre-colonial period and talks of the Zulu kraal organisation and its composition which consists of many families who were related by blood. The most senior men in the kraal would be the kraal head and he must come from the ancestral male line, and the same goes to the clan system which was the basic political system in pre-colonial traditional administration in the Zulu Empire. These were replaced during Shaka's reign and were known as homestead heads, the Iziduna, regiment officers, messengers and tribute collectors among others.

Rasheed explains the socio-cultural and political aspects of Yoruba and traces the history and expansion of Yoruba land to Oduduwa and his children²⁶.

He mentions the names of all the Yoruba Obas in his book titled *THE PRACTICE OF DEMOCRACY in the YORUBA TRADITIONAL SYSTEM OF GOVERNMENT*, their titles, and their political structures. The lists of the Obas hierarchies, the selection of Oba in Yoruba land, social and cultural aspects of Yoruba were also discussed.

Kuper writes on the rise of Zulu power in the early nineteenth century as being treated as an outstanding example of contemporary Southern African process of 'state formation',

²⁵ S, Bleeker. *The Zulu People of South Africa*. Great, Britain, Dobson Books Ltd, 1971. Pp. 35-65.

²⁶. O.O. Rasheed. *The History of Yoruba: The Practice of Democracy in the Yoruba Traditional System of Government*. Ikirun Osun State, Muktab International Publisher, 2006, Pp. 8-15.

26. M, Gluckman. *The Kingdom of The Zulu of South Africa in M.Fortes and E.E.Evans-Pritchard (eds.) AFRICAN POLITICAL SYSTEMS*, London, Oxford University Press, 1940, Pp 25-46.

which was associated with revolutionary social changes.²⁷ In other words he says there were strong continuities with established forms of chieftaincy in the region, and in particular the Zulu political system was based on a traditional, pan-Nguni homestead form of organization. The Zulu homestead was divided into two parts; each with its own identity. This opposition was mapped into the layout of ordinary homesteads and royal settlements. The homestead and its segments provided both geographical and structural nodes of the society. The developmental cycle of the homestead pattern created a fresh alignment of units in each generation. Segmentation was provided by the 'houses' constituted for each major wife and designated heir. Each of these houses represented a faction, within the homestead, of relationships sealed by marriage with outside groups; leaders support a faction in their political group in the family.

Daryll, F. & Kaberry, P.M. in *West African Kingdoms in the Nineteenth Century* discuss the powerful kingdoms with complex political organization, elaborate state religion which were developed early in the wide region that lay between the Western Sahara and the Guinea Coast. These societies became known very early on in Tropical Africa to the Mediterranean, and in the Western World they were also known for their external relations which were established through commercial activities with the Arabic speaking merchants.²⁸ This piece dealt extensively on the politics, religion and judicial activities in Yoruba kingdom of Oyo and explained the political structure of the Oyo kingdom in detail with their functions, and sheds more light on the administration of Oyo which had been conducted by the palace officials and thus was in the hands of the king. The work fails to discuss the continuity and relevance of the socio-political and judiciary system in the present administration of Oyo.

²⁷ A. Kuper The "House" and the Zulu Political Structure in the Nineteenth century, *Journal of African History*, Vol 34, no3, Cambridge University Press, <http://www.jstor.org/stable/183103>, 1993, Pp. 469-476.

²⁸W, Peter Morton, The Yoruba Kingdom of Oyo in (eds.) Darryll, Forde and Kaberry, P.M. *West African Kingdoms in The Nineteenth Century*, Londo; Oxford University Press, 1967. Pp.48-58.

Gluckman in *THE KINGDOM OF THE ZULU OF SOUTH AFRICA* in M. Fortes & E.E. Evans-Pritchard (eds.) *AFRICAN POLITICAL SYSTEMS*, discusses the Zulu king and the state, status and political power, tribes within the Empire, sanctions on authority and the stability of the state. The people and their leaders and the period of European rule. He emphasizes the Zulu traditional administrative structures and operations, viewing it from the early period till the last king of the independent Zulu Empire. The king was the head of the traditional administrative system and presided over traditional council meetings to discuss important state matters and can only be advised by the council. He discusses the functions of Iziduna, traditional chiefs, homestead heads and counselors among other things. He said no Zulu king can rule in a despotic manner, because there were ways of checking the king's misrule among the royal families especially within the princes groups, each prince had his own followers. In case of misrule or having been despotic by any kings, the subjects would shift their support to the most senior prince in order to checkmate the kings' misrule and most times it may lead to the assassination of such a despotic king. Those were ways of placing sanctions on the authority and bringing stability back to the Empire

Olatunbosun, points out that Oyo became so significant in the history of Yoruba, because of the position Alaafin held among the children of the founder of the Yoruba tribe and was the most popular among them.²⁹ The Empire extended beyond the Yoruba up to the Republic of Benin and included some Yoruba settlements in the Republic of Togo. The territorial expansion of the Empire was possible through a well trained army. The armies in the Oyo Empire were in different battalions with their leaders, but the overall leader in the military was known as Aare- Onakakanfo. He lived on the outskirts of the empire.

Meshack, has given a detailed explanation in "*RETHINKING the CHIEFTAINCY IMPERATIVE in ENGENDERING GRASSROOTS DEVELOPMENT in NIGERIA*". Chiefs

²⁹ P.O, Olatunbosun. *History of West Africa from AD 1000 to the Present Day*. Ilesa, Fatiregun Press, 1981, Pp.123-148.

are part and parcel of the government as well as serving the people.³⁰ The activities of traditional title holders in Nigeria have been subjected to a lot of criticisms. While the chieftaincy institution has been disparaged and dismissed as not being relevant in a democratic political system like Nigeria. Others observe that it is the veritable tool needed for the political, economic, social and cultural development of any country. He submits that traditional institution should not be relegated to the background if we must make progress. The digression from it began in the colonial era and the strains are many: ranging from decay in the institution to corruption of individuals. Today, global framework requires that traditions cannot be dead unless people have lost their sense of history.

1.4 Problem Statement

The proposed research will be among the intellectual works clamoring for the resuscitation of our traditional values and culture, which are already going extinct as a result of the imposition of western civilization. Various studies have been done on cultural, political, social and economic origins and traditions of the people in Africa.³¹ Such works include Bennett, 2004; Koyana, 2006; Ajibola, 1982; Oluyemi, 1975; Bryant, 1964; Johnson, 1921 but none have done work on justice dispensation among Oyo of Nigeria and Zulu of South Africa. This is the gap this study intends to fill. However, very little is known in the justice dispensation and administration of Oyo in Nigeria and Zulu in South Africa. Therefore this study fills a hiatus with a particular reference to judicial structures and operations of these two giant Empires.

The justice dispensation in Oyo and Zulu Empires represented the traditional courts procedural system that defied westernisation. Though some scholars argued that they eroded by western ideas and procedure, their modes of operation remained subsequently unaltered. The study interrogated the nature and operation of justice dispensation and

³⁰ O, Ofuafor, Rethinking the Chieftaincy in Engendering Grassroots Development in Nigeria in (eds.) Tunde Babawale, Akin Alao and Bimbo Adesoji *"The Chieftaincy Institution in Nigeria"*, 2010, Pp. 140-152.

³¹ J. O. Ajibola. *Administration of Justice in the Customary Courts of Yoruba land*. Ibadan: University Press, 1982, P211.

administration structures of the two Empires anchored on their traditional, political and legal beliefs..

1.5 Aim

This study aimed at giving an exposition of the justice dispensation in Oyo and Zulu traditional administrative structures between pre-colonial, colonial and a glimpse of post-independence epochs.

1.6 Objectives of the Study

This research study has the following as its objectives:

1.6.1 To examine the courts' process in Oyo and Zulu Judicial structures.

1.6.2 To explore the litigation intricacies among Oyo and Zulu traditional courts.

1.6.3 To interrogate European influence on Oyo and Zulu traditional administrative systems.

1.6.4 To investigate justice dispensation in Oyo and Zulu traditional administrative systems.

1.6.5 To analyse and evaluate the doctrine of separation of power and its effects on Oyo and Zulu traditional administrative systems.³²

1.7 Research Questions

In this research, the following research questions will be addressed:

1.7.1 How did courts operate in Oyo and Zulu traditional administration in pre-colonial and post-independence era?³³

³² .A. Bryman. *Social Research Methods* 2nd ed. London: Oxford University Press, 2004, P,112

³³ . K. Maree. *First Steps in Research. Pretoria: Van Schaik Publishers, 201, P. 182*

1.7.2 How could the traditional judicial systems among Oyo and Zulu best be described, and what form did they take?

1.7.3 What was the impact western civilization on the traditional administration systems of the Oyo and Zulu?

1.7.4 How was justice administered in Oyo and Zulu traditional administrative systems?

1.7.5 Did the doctrine of separation of power exist in Oyo and Zulu traditional administrations?

1.8 Intended Contribution to Knowledge

African culture in recent times is said to be going into extinction at the expense of western culture. Hence, this research hinges among the views of the intellectual works which are clamoring for the resuscitation of African traditional values and culture.³⁴ The study purports to be a pioneering attempt of its kind in the field of comparative studies of the justice dispensation in Oyo and Zulu traditional administrative structures. Furthermore, the study serves to use the Oyo (Nigeria) and Zulu (South Africa) and possibly empower other African societies towards placing greater values and ensuring that African cultures and traditions are upheld.

The study intends to contribute to the body of knowledge by bringing new ideas through wider consultation of literature both published and unpublished and through the theoretical framework of some philosophers and professionals that propounded related theories on the research study. A copy of the thesis will be distributed to the palaces of the kings, the Municipalities' libraries, archives and museums. The report from the field will be useful in helping to preserve African traditions in contact with western civilisation. This can further be used by upcoming researchers to validate data on the present phenomena.

³⁴. T. O. Elias. *Government and Politics in Africa*. Delhi: Asia Publishing House, 1963, P. 138

1.9 Research Methodology

This study will adopt qualitative research methodology as qualitative study designs are quite prevalent in historical research. The approach may differ, depends on the types of research being investigated.³⁵ According to Burns and Ritchie, qualitative research methodology is comprehensive and it gives detailed information on the research topic. In addition, the methodology involves some strategies or steps, such as oral history, focus groups or group interviews, participant observation and holistic approaches among others. This involves gathering and analysis of data. Two main sources of data collection will be employed for this study; (a) desktop review of secondary sources, (b) primary sources, which include: oral interviews, questionnaires, photographs, tape recorders, cameras, diaries, archival materials, relics, records of eye witnesses, artifacts, among other Desk-top review³⁶. This method involves the critical review of the existing literature, such as books, journal articles, published theses, monograph, previous research studies, internet, government agencies, libraries, gazette documents, courts ordinances, court judgements and archival materials.

1.9.1 Study Population:

The study population consists of Oyo-Yoruba in the western part of Nigeria, and KwaZulu-Natal province in South Africa. The study will make a comparison of justice dispensation in Yoruba and Zulu traditional administrative structures. Fifty (80) questionnaires will be distributed in each empire totaling one hundred and sixty (160) questionnaires all together. The empires are large and practice similar systems which the study aims at examining.³⁷ Hence, the researcher will divide the empires into onemunicipality each for easy accessibility. The one municipality from the Oyo Empire

³⁵ . D, A. Ritchie. *Doing Oral History: A Practical*. Oxford: Oxford University Press, P 117.

³⁶ . R. B. Burns. *Introduction to Research Methods*. Melbourne: Longman Cheshire, 1997, P. 64.

³⁷ . C. Bertram. &I. Christiansen. *Understanding research: an Introduction to Reading Research*. Van Schaik Publisher: Cape Town, 2015, P188.

will be: Atiba Local Government, while the other municipality from the Zulu empire will be: Nongoma Local Municipality, Thus, a total of two municipalities will be adopted from the two empires for the study. 80 questionnaires each will be administered to purposively selected participants representing the different municipalities. This will amount to 160 questionnaires for the study. The questionnaires will be administered in order to compare and validate information retrieved through semi-structured interviews with the selected traditional leaders, historians and elders in the land, while purposive sampling techniques will be adopted because of the level of information that the researcher seeks. Only individuals with rich knowledge of the culture and tradition of the land will be able to give adequate information.

1.9.2 Sample Size:

The sample size will consist of traditional chiefs (20), palace officials (20), professional historians (20) and knowledgeable elderly men and women on the research topic (20). The reasons for these proportions are based on the purposive sampling and accessibility of the respondents, and how knowledgeable they are on the topic.³⁸ The selection will be based on the triangulation method. The information from the Imperial majesty offices shows that the traditional chiefs are capable of supplying all necessary information the researcher needs, and they are the leaders and custodians of culture of their people. The palace officials will be interviewed also, because they perform statutory duties and are knowledgeable in the palace administration. Professional historians such as professors, doctors and others will be interviewed because they are scholars and authorities in the field. Hence, their expertise will be of immense value to the study. Lastly, knowledgeable elderly men or women who can recite or tell the researcher the history of their people through oral transmission will also be interviewed in the study. This will enable the researcher to get valid information capable of enriching the study.

³⁸ .J. Grix. *The foundations of research*. Palgrave, Basingstoke: Hound mills, 2012, P.62.

1.9.3 Procedure:

The interview sheets and questionnaires for the study population will be translated into two languages, the Yoruba and isiZulu languages through the help of interpreter(s). In-depth face-face conventional interview methods will be employed when interviewing some selected chiefs and individuals in both empires.³⁹ They will be asked about the justice dispensation in Oyo and Zulu traditional administrative structures. The research topic, section “A” will consist of bio-data information of the respondents, while section “B” will consist of interviews and research questionnaires on the research topic. The reason for using both research questions and interview sheets is to have an in-depth knowledge on the subject matter.

Contacts will be made with the local government and regional department of local government officials in each country, palace officials, kings, and traditional chiefs, in person and a lot of follow up calls, messages through e-mails and phone calls. The initial contact will explain the objectives of the visit, while others will serve as a reminder. Permission will be sought to conduct interviews with the representative of the respective chiefs of the areas. In addition, approval must be given through the enlisted officers, before the researcher will gain access to the key informants to be interviewed in both empires. If the approval is given through the local government officials or palace officials, the interviewer will book for the appointment date, time and venue of the interview with the approval of ethical and research committee, before the researcher can embark on field work.

1.9.4 Data Collection:

Apart from the reviews drawn from the existing literature, in qualitative research, another main source of collecting data is through oral interview.⁴⁰ A comprehensive face to face

³⁹ .L. R. Gay. *Educational Research: Competencies for Analysis and Application*. New York: Macmillan, 2014, Pp. 76-78

⁴⁰. Neuman, W. L. *Social Research Methods: Qualitative and Quantitative Approaches*. (8th) Harlow: Pearson Education Limited, 2014, P.92.

interview will be conducted within the study population; also the study will make use of questionnaires to gather relative information on justice dispensation in Oyo and Zulu traditional administrative structures, through sampling method and their knowledge on the topic of the study to validate the existing literature. In the process of interview, the researcher will make the questions simple and direct to permit a level of autonomy for the respondents. This will assist the researcher to access relevant information based on the research topic.

1.9.5 Data Analysis:

At this stage, all data gathered from the field, such as oral interviews with the use of interview sheets or a voice recorder and those questionnaires given out to the people within the sample size will be analysed. Because of the nature of this research, the research intends to use the following methods of data analysis: narrative techniques, SPSS for quantitative aspects of the data and simple percentage for qualitative aspects of the interview.⁴¹ This will be done to validate the secondary sources on the justice dispensation in Yoruba and Zulu traditional administrative structures and to have a broader knowledge about the problem being investigated.

⁴¹ . Leedy, P.D. & Ormrod, J.E. *Practical research: Planning and Design Pearson Education*: Boston, 2010, P.89.

CHAPTER TWO

A THEORETICAL BACKGROUND OF COMPARATIVE-HISTORICAL ANALYSIS

2.1 Introduction

A comparative study of the justice dispensation in Oyo and Zulu traditional administrative structures shall be made intelligible by taking cognizance of the theoretical background of comparative studies in history. De Villiers argues that in disciplines such as sociology and political science comparison is common. He agrees with van Jaarsveld and de Klerk that adherents of Leopold von Ranke claim that historical incidents, personalities and developments are fundamentally unique, but positivistic history researchers believe that common underlying features may be found after critical analysis of research data in a number of representative cases.⁴² De Villiers further argues that in scientific history circles similar phenomena are traced in names such as urbanization or slavery. He retorts:

*"Superb comparative historical studies conducted by the French Annales School with exponents such as Lucien Febvre, Marc Bloch and Fernand Braudel are universally acknowledged. Their research attempts to uncover human experience in values, trends, ideals and methods that people share within a particular context. The candidate must explore and present this fully."*⁴³

Recent years have seen a surge of publications concerning the methods used in comparativehistorical analysis.⁴⁴ These works reflect a growing self-consciousness about research design among comparative-historical analysts, and they address a wide range of issues concerning descriptive and causal inference that are of general importance to the social sciences. Although these studies have not yet had a large impact in the field of methodology, which is oriented toward statistical analysis.⁴⁵ I argue that their insights deserve a central place within social science methodology.

Comparative-historical analysis is a field of research characterized by the use of systematic comparison and the analysis of processes over time to explain large-scale outcomes such as revolutions, political regimes, and welfare states. It can be distinguished from other approaches within historical sociology, such as rational choice analysis and interpretive

⁴² .J. de Villers, Stellenbosch, 18 January 2018; F.A. Van Jaarsveld: *Geskiedkundige Verkenninge*, p.70; P. de Klerk: *Geskiedenisvergelyking en Generalisasie*, p.44.

⁴³ .Ibid; M. Bloch: *The Historian's Craft*, p.67; C. Gustavson: *The Mansion of History*, p.76.

⁴⁴ A. Abbott A. *Time Matters; On Theory and Method*. Cf. R Adcock and R. D. Collier *Measurement validity: a shared standard for qualitative and quantitative research*. *Am. Polit. Sci. Rev.* 95:529-46.

⁴⁵ C. Antoni: *From History to Sociology*, p.96; L. Marsak: *The Nature of Historical Inquiry*, p.61.

analysis.⁴⁶ Here, I do not consider the methods (e.g., game theory, ethnography) associated with these alternative strands of historical sociology. Statistical methods dominate the methodology section of the American Sociological Association, the required courses on methodology in leading graduate programmes and the leading methodological journals in the social sciences.

This argument is developed over three sections. The first two sections consider methods of inference, focusing respectively on tools for analyzing necessary and sufficient causes and tools for the study of temporal processes. The third section is concerned with descriptive inference, exploring techniques of conceptual innovation and tools for achieving measurement validity. In all these discussions, the emphasis is on the distinctive contributions of narrative-historical methods- that is, contributions that go beyond what mainstream statistical methods have to offer.⁴⁷ The article closes with a call for assigning comparative- historical methodology a more central place in general social science methodology.

2.2 Tools for studying necessary and sufficient causation

Hypotheses about necessary and sufficient causes-including probabilistic necessary and sufficient causes-are commonplace in nearly all domains of research. However, to evaluate such hypotheses, researchers cannot rely on mainstream statistical tools. Standard regression frameworks will incorrectly estimate causal effects when confronted with these kinds of cases.⁴⁸ By contrast, comparative-historical methodology offers tools well adapted to the analysis of necessary and sufficient causes.

⁴⁶ J. Mahoney, et al. *Colonialism and development: a comparative analysis of British and Spanish colonies*, pp.45-61.

⁴⁷ R. Aminzade. *Historical Sociology and Time*, pp.456-80; J. Cannon: *The Historian at work*.

⁴⁸ A. Bennett and A. George: *An alliance of statistical and case study methods: research on the inter-democratic peace*. APSA-CP: *Newsl. ASPA Organ. Sect. Comp. Polit.* 9(Winter), pp. 6-9.

2.2.1 Overcoming Skepticism

Although many statistical researchers may concede that they lack sophisticated tools for identifying necessary and sufficient causes, they likely will argue that necessary and sufficient causes are not relevant to the social sciences, and thus that this deficiency is not a problem. The belief that necessary and sufficient causes are irrelevant to the social sciences is common among methodologists. It is therefore useful to discuss these causes in relationship to skeptical concerns about them.

An initial objection is that necessary and sufficient causes do not exist. On reflection, however, one realizes that many examples of these causes can be identified for any given outcome. ⁴⁹For example, oxygen and human beings are necessary causes of a revolution; likewise, a GNP per capita of \$100,000 and an advanced industrial economy are sufficient causes of a high level of economic development. The problem with these examples, of course, is that they refer to trivial necessary causes and tautological sufficient causes. Hypothetical examples like these lead some methodologists to believe that scholars cannot identify nontrivial necessary causes and non-tautological sufficient causes. ⁵⁰In fact, however, there are excellent empirical criteria for distinguishing trivial from nontrivial necessary causes and tautological from non-tautological sufficient causes.

Trivial necessary causes are those in which the cause is present in all cases, irrespective of the value on the dependent variable. For example, the existence of human beings is trivially necessary for a revolution, because this cause is present in all cases of revolution and non-revolution alike. Indeed, the "trivialness" of a necessary cause can be empirically measured by assessing the degree to which the necessary cause is present among the case population: Trivialness occurs when a necessary cause is almost always present in the population. Likewise, the relevance of a necessary cause can be empirically measured in light of the degree to which the dependent variable is present among all cases: Irrelevance

⁴⁹ D. Dion: Evidence and inference in the comparative case study. *Comp. Polit.* 30, pp. 127-45.

⁵⁰ G, Goertz: The substantive importance of necessary condition hypotheses, pp. 65-94.

occurs when the dependent variable is almost always absent in the population. Goertz offers straightforward techniques for carrying out these assessments.⁵¹

With a tautological sufficient cause, the analyst identifies a set of factors that are contained within the very definition of the outcome being considered. When this happens, there is no temporal separation between the cause and outcome (or the outcome may actually occur before the cause).⁵² For instance, the argument that large-scale industrialization is a sufficient cause of economic development is tautological because there is no clear definitional distinction or temporal separation between the occurrence of industrialization and economic development (or the outcome of economic development may occur before full-scale industrialization is present). Hence, one can identify tautological sufficient causes by inquiring about their temporal location vis-a' -vis outcomes.⁵³ Furthermore, as with necessary causes, one can assess the trivialness and relevance of sufficient causes by evaluating the degree to which the sufficient cause and the dependent variable are present in the population. In this case, trivialness occurs when the sufficient cause is almost always absent, and irrelevance arises when the outcome is almost present.⁵⁴

Even if necessary and sufficient causes can be nontrivial, non-tautological, and highly relevant, skeptics argue that important hypotheses about these causes are quite rare. Yet, Goertz proposes one will find important hypotheses about these causes in any major area of research, as he backs up by citing 150 examples of such hypotheses, including many formulated by cross-national statistical researchers.⁵⁵ In comparative-historical analysis, scholars also have formulated many of these propositions.

When confronted with the prevalence of examples like these, skeptics may then turn to another on criticism: necessary and sufficient causes rely on a deterministic logic that is

⁵¹ G, Goertz. Cause, correlation, and necessary conditions, pp. 47-64.

⁵² R. Adcock and D. Collier: Measurement validity: a shared standard for quantitative and qualitative research. *Am. Polit. Sci. Rev.* 95, pp. 529-56.

⁵³ G, Goertz. Cause, correlation, and necessary conditions, pp. 47-64.

⁵⁴ H. Lamer and L. Thompson: *The Frontier in History*, pp. 81-88.

⁵⁵ G, Goertz. The substantive importance of necessary condition hypotheses, pp. 65-94.

simply inappropriate for the social sciences.⁵⁶ For example, critics might note that a single instance of measurement error can lead one to invalid conclusions about necessary and sufficient causes, - en that these causes assume a relationship that is invariant for certain values on the independent variable.

Comparative-historical methodology offers two solutions to these concerns. One strategy is to analyze necessary and sufficient causes in a probabilistic fashion-that is, to evaluate causes are necessary or sufficient at some quantitative benchmark (e.g., necessary or sufficient o of the time). Scholars who are convinced that necessary and sufficient causation is inherently deterministic will reject this move toward probabilistic analysis.⁵⁷ Yet, empirically speaking, it is clearly useful to know if some factor X (or some value Z on variable X) is necessary or sufficient for genocide, revolution, or economic development 90% of the time (or perhaps even 50% of the time). It is unclear why one would dismiss the accumulation of knowledge about these kinds of probabilistic causes on any substantive or policy grounds.⁵⁸

A second probabilistic strategy is designed for studies that measure variables continuously rather than dichotomously. This strategy assumes that a cause can be considered necessary or sufficient if all cases are consistent with this interpretation when variables are adjusted to allow for a small amount of measurement error.⁵⁹ For example, imagine a study in which 19 out of 20 cases are consistent with the interpretation of (nontrivial) causal necessity, and the one case that fails the test would also be consistent if either the independent or dependent variable were slightly recoded. A possible approach is to consider the evidence as consistent with the interpretation of causal necessity, given that the score on the disconfirming case needs to be adjusted only a small amount to meet this

⁵⁶ J.H. Goldthrope: Current issues in comparative macrosciology: a debate on methodological issues. *Comp. soc. Res.* 16, pp. 1-26.

⁵⁷S. Liberson: *Making it Count: The Improvement of Social Research and Theory*, p.86.

⁵⁸J.H. Goldthrope: Current issues in comparative macrosciology: a debate on methodological issues. *Comp. soc. Res.* 16, pp. 1-26.

⁵⁹ . A Abbott: *Time Matters: On Theory and Method*, pp41-46

standard. Ragin has developed suggestive guidelines making such adjustments in the context of fuzzy-set analysis.⁶⁰

A final concern might center on statistical significance, which is a major criterion for assessing the "importance" of independent variables in quantitative research. Fortunately, techniques have been developed for generating precise coefficients that specify levels of significance with deterministic or probabilistic) necessary and sufficient causes. Very much like mainstream quantitative research, these techniques compare the observed proportion supporting the interpretation of causal necessity or sufficiency against the null hypothesis that this observed proportion is a product of chance.⁶¹ Unlike mainstream quantitative research, however, a small to medium number of cases will often be enough to achieve standard levels of statistical significance when analyzing necessary and sufficient causes. Hence, comparative-historical analysts who develop hypotheses about necessary and sufficient causes with a medium N often can be as confident about the significance of their findings as quantitative researchers who analyze many more cases.⁶²

By way of concluding this discussion, it could be stated that erroneous beliefs are commonly held about necessary and sufficient causation. These beliefs do not reflect a sophisticated understanding of necessary and sufficient causation, and they should not be used as a basis for arguing against this approach to causal analysis. Journal editors in particular must view very dubiously referee reports that use one or more of these reproaches in reviewing comparative historical work, even if the referees are respected statistical methodologists."⁶³

⁶⁰ C.C. Ragin: *The comparative Method :Moving Beyond Qualitative strategies*. Pp43-48

⁶¹ Ibid.

⁶² D.T. Campbell:" Degree of freedom " and the case study. *Comp. Polit.Stud.*8,pp.178-93

⁶³ E.Amenta:*social politics in context:the institutional politics theory and social spending at the end of the New Deal*.*soc.forces*75,pp.33-60

2.2.2 Specific Methods for Analyzing Necessary and Sufficient Causes

Which is the best method for testing necessary and sufficient causation depends in part on how one chooses to represent necessary and sufficient causes. Philosophers and many others use a dichotomous logic in which X is a necessary cause of Y when the following statement is true: "Y only if X." Likewise, for a sufficient cause the following statement applies: "If X, then Y." Yet, these kinds of causes can also be represented using set theory.⁶⁴ fuzzy-set theory.⁶⁵ And calculus.⁶⁶ Depending on the approach, causes and outcomes need not be measured as dichotomous categories; rather, one can also use continuous variables.

When variables are measured categorically in comparative-historical analysis, perhaps the most widely used method is "typological theory".⁶⁷ Typological theory involves the typologies instruction of whose cells represent different values on independent and dependent variables. Different theoretical types are systematically matched to determine whether cases follow patterns of correspondence consistent with necessary or sufficient causation.

This method relies on logic similar to Mill's⁶⁸ methods of agreement and difference, as well as Przeworski & Teune's most similar and most different systems designs?⁶⁹ For example, parallel to the method of agreement, the analyst using typological theory may conclude that a given type necessary for an outcome if the type is both present and absent among a group of cases - all exhibit the outcome of interest. Likewise, parallel to the method of difference, the analyst may conclude that a type is not sufficient for an outcome

⁶⁴ B.A.MOST and H.starr:basic logic and research design: conceptualization,case selection, and the form of relationships,pp.25-46

⁶⁵ C.C.Ragin:Fuzzy-set social science,p33

⁶⁶ G.Goertz:The substantive importance of necessary condition hypotheses,pp,65-94

⁶⁷ A.Bennett and A,George:An alliance of statical and case study methods:research on the inter-democratic peace.APSA-CP:News sl APSA Organ.Sect.Comp.Polit.9(Winter),pp.6-9

⁶⁸ J.S.Mill:A System of Logic,p74.

⁶⁹ Przeworski and H,Teune:The Logic of Comparative Social Inquiry,pp144-152

if the type is present in both where the outcome is present and cases where the outcome is absent.

Topological theory shares some of the limitations associated with Mill's methods.⁷⁰ At the same time however, typological theory is not designed to be a blind methodological apparatus; rather, the technique is intended to be used in light of one's theoretical and substantive knowledge of actual cases. Furthermore, typological theory is generally used in conjunction with other methods, especially process analysis (discussed below), that greatly compensate for its limitations.⁷¹

There are numerous examples of works in comparative-historical analysis that implicitly or explicitly employ typological theory. Books published since 1990 include the studies of political regimes by Downing,⁷² Luebbert,⁷³ Mahoney⁷⁴ and Yashar,⁷⁵ major works on revolutions by Goldstone.⁷⁶ Goodwin⁷⁷ and Wickham-Crowley⁷⁸ the important studies of party and electoral system dynamics by Collier & Collier and Jones Loung:⁷⁹ and various other studies focused on themes such as state formation, social provision, and racial domination.⁸⁰ All these books offer sophisticated typologies that designate cases as similar or different across theoretical dimensions. These dimensions then are treated as values on variables and matched to assess whether cases follow patterns of correspondence consistent with necessary and sufficient causation.

⁷⁰ A. Bennett and A. George: An Alliance of statical and case study methods: Research on the inter-democratic peace. APSA-CP: News APSA Organ. Sect. Comp. Polit. 9 (Winter), pp.6-9.

⁷¹ J. Mahoney: Path dependence in historical sociology. *Theory Soc.* 29, pp.507-48

⁷² B.M. Dowling: The military Revolution and Political Change: Origins of Democracy and Autocracy in Early Modern Europe, p.51.

⁷³ G.M. Luebbert: Liberalism, Fascism, or Social Democracy: Social Classes and the Political Origins of Regimes in Interwar Europe, pp.122-134.

⁷⁴ J. Mahoney: Path dependence in historical sociology. *Theory Soc.* 29, pp.507-48

⁷⁵ D.J. Yashar: Demanding Democracy: Reform and Reaction in Costa Rica and Guatemala, 1870s -1950s, pp.77-85.

⁷⁶ J.A. Goldstone: Initial conditions, general laws, part dependence, and explanation in historical sociology. *Am. J. Sociol.* 104, pp.829-45.

⁷⁷ J. Goodwin: No Other Way Out: States and Revolutionary Movement, 1945-1991 pp.63-73.

⁷⁸ T. Wickham – Crowley: A qualitative comparative approach to Latin American revolutions. *Int. J. Comp. Sociol.* 32, pp.82-109.

⁷⁹ P. Jones Loung: Institutional Change and Political Continuity in Post-Soviet Central Asia- Power, Perception, Pacts, pp.2-33.

⁸⁰ T. Erthman: Birth of the Leviathan: Building states and Regimes in Medieval and Early Modern Europe, p.112.

Other methods entail more formal apparatuses for evaluating necessary and sufficient causes. Perhaps the best known of these is Boolean algebra, which Ragin introduced into the field. Boolean algebra is especially appropriate for the analysis of combinations of variables that are sufficient for the occurrence of an outcome. Because several different combinations of factors may each be causally sufficient, this method allows for multiple paths to the same outcome. In addition, unlike some regression analyses, this approach recognizes that a given value on one variable may itself exert opposite effects depending on the other variable values with which it is combined. Thus, the dichotomous variable X may need to be present in one causal combination to produce a given outcome, whereas X may need to be absent in another causal combination to produce the same outcome.

More recently, Ragin has introduced fuzzy sets as a means of continuously coding variables according to the degree to which they correspond to qualitative categories of interest.⁸¹ This fuzzy-set measurement is highly appropriate for the analysis of necessary and sufficient causation, including under probabilistic assumptions in which different degrees of necessary or sufficient causation are considered. To employ the technique, the analyst must measure all variables as fuzzy sets and then assess the relationship between their values. With a necessary cause, fuzzy-membership scores on the outcome will be less than or equal to fuzzy-membership scores on the cause.

By contrast, with a sufficient cause, fuzzy-membership scores on the cause will be less than or equal to fuzzy-membership scores on the outcome. To incorporate considerations of probabilistic causation, the researcher might argue that if no case's score on the outcome (or cause) exceeds its score on the cause (or outcome) by more than a small portion of a fuzzy-membership unit, then the pattern is consistent with the interpretation of causal necessity (or sufficiency). Likewise, the probabilistic benchmarks and significance tests

⁸¹ C.C. Ragin: *The Comparative Method: Moving Beyond Qualitative and Quantitative Strategies*, p. 179.

mentioned above applied can be applied when using fuzzy measures of variables. Although the procedures involved become especially complicated when combinations of variables are considered using probabilistic criteria, a free software package that performs the operations is available.⁸²

Although many comparative-historical researchers prefer the flexibility of typological theory, an impressive range of studies have used more formal techniques for testing hypotheses necessary and sufficient causes. Examples from major social science journals include Amenta's⁸³ study of New Deal social spending, Berg-Schlosser and DeMeur's⁸⁴ analysis of democracy in inter-war Europe, the comparative studies by Hicks⁸⁵ and Huber *et al.*⁸⁶

To conclude, a whole class of methodologies now exists for testing hypotheses about necessary sufficient causes. The importance of these methodologies depends in part on how only probabilistic or deterministic necessary and sufficient causes are found in the social world. In turn, the answer to this question depends on analysts actually using the available methodologies to test the many hypotheses that posit necessary and sufficient causes.

⁸² C.C. Ragin and K.A. Drass: Fuzzy- Set/ Qualitative Comparative Analysis, p. 63.

⁸³ E. Amenta: Social Politics in context: the institutional politics and social spending at the end of the New Deal. Soc. Forces 75, pp. 60-69.

⁸⁴ D.Berg-Schlosser and G.DeMeur: conditions of democracy in inter war Europe: a Boolean test of major hypotheses.comp.politi.26,pp.253-79.

⁸⁵ A.M.Hicks: qualitative comparative analysis and analytical induction: The case of the emergency of the social security state.sociol.methods res.23,pp.86-113.

⁸⁶ E.Huber et al: social democracy, christian democracy, constitutional structure, and the welfare states.Am. G. Sociol.99 ,pp.711-49.

2.3 Tools for studying temporal processes

Causation is fundamentally a matter of sequence; all scholars who seek to infer causation will do best if overtime data are available.⁸⁷ Yet, much statistical research is forced to present "snapshot" regressions that measure variables at a single point in time and remove them from their broader temporal context. To be sure, statistical methodologists have advanced powerful new techniques for the analysis of temporal processes in recent years. Nevertheless, given data limitations, empirical work in the leading journals only occasionally employs these techniques.

By contrast, comparative-historical analysis is inherently a field in which researchers marshal a great deal of overtime data to infer causation. In fact, a common view is that the analysis of processes over time is the central basis for causal inference in comparative-historical research.⁸⁸

Even so, however, the specific tools that researchers in this field use to analyze temporal processes are not well known in the general field of methodology.

2.3.1 Process Analysis

Comparative-historical research is defined in part by the analysis of sequences of events that within cases. Informally, analysts have long recognized that this kind of "process - is" facilitates causal inference when only a small number of cases are selected. The contribution of recent methodological work has been to help these analysts more formally understand how process analysis achieves this end.

Process analysis generates leverage in part by allowing researchers to examine the specific mechanisms through which an independent variable exerts an effect on a dependent

⁸⁷ D.Rueschemeyer et al:Capitalist development and democracy,pp.57

⁸⁸ H.E.BradyHE and D.Collier (eds) :Rethinking social inquiry:Diverse Tools,Shared standards. Cf M.D. Lanham et al: the method-ology of necessary conditions.Am. J.polit.sci.44,pp8442-58

variable.⁸⁹ Under this approach, the analyst starts with an observed association and then explores whether the association reflects causation by looking for mechanisms that link cause and effect in particular cases. For example, if one hypothesizes that a high level of economic development is almost always sufficient for the maintenance of democracy.⁹⁰ Then process analysis can be used to explore the linkages through which high levels of economic development generate democratic stability. If clear linkages cannot be discovered, doubt is cast upon the idea that the relationship is causal.

This form of process analysis is currently one of the most powerful techniques for overcoming problems of selectivity and omitted variable bias that plague nearly all social research. These problems arise because analysts cannot know for certain whether the associations they discover are causal or simply the spurious product of an unknown antecedent variable.⁹¹ However, if analysts can point to specific linking mechanisms that connect cause and effect, they are in a much better position to assert that the relationship is causal. For example, in research on smoking and lung cancer, the ability of investigators to supplement statistical data with information on the generative processes through which the carcinogens in cigarette smoke affect human tissues was critical to the claim for a causal linkage.⁹²

Although statistical researchers do have sophisticated tools for analyzing intervening variables, many scholars believe that uncovering causal mechanisms is inherently a theoretical practice that requires qualitative data evaluation rather than statistical reasoning.⁹³ The issue is partly that causal mechanisms may refer to posited entities that cannot be directly observed, making statistical measurement problematic. Moreover, the

⁸⁹ A. L. George. And A, Bennett: Case Studies and Theory Development, pp 82.

⁹⁰ A, Przeworski et al: Democracy and Development: Political Institution and Material Well-Being in the World, 1950-1990, pp.74-85

⁹¹ S. Lieberman: Small N's and big conclusions: an examination of the reasoning in comparative studies based on a small number of cases. Soc. Forces 70, pp. 307-20.

⁹² D. A. Freedman: From association to causation via regretion. In Casuality in Crises, pp.113- 61.

⁹³ P. Hedstroem and R. Swadberg(eds): Social Mechanisms: An Analytical Approach to Social Theory, p.86.

identification of causal mechanisms may require analyzing data that embody dynamic relations and unfolding processes in a way that does not lend itself to efficient quantification or statistical inference. Thus, when confronted with a statistical association, what scholars need to infer causation is not another statistical association, but rather a theoretically-informed discussion of the generative processes that produce the association in the first place. Goldthorpe nicely summarizes this argument, asserting that the identification of causal mechanisms does not "reflect statistical thinking ... [but rather] must be added to any statistical criteria before an argument for causation can convincingly be made."⁹⁴

The use of process analysis to explore intervening processes has led comparative-historical researchers to elaborate, modify, and occasionally reject the findings of statistical research. One important example is Rueschemeyer *et al.*'s study of democratization, which begins with the statistical correlation between economic development and democracy.⁹⁵ The authors elaborate on this correlation by drawing on detailed evidence from within cases to show that economic development affects democracy by tipping the balance of power in favour of class actors (e.g., the working class) that tend to have a strong interest in promoting democracy. Likewise, scholarship on the "democratic peace" (i.e., the hypothesis that democracies do not go to war with one another) has benefited from an interactive research program in which researchers move back and forth between statistical analysis and comparative case studies.⁹⁶

In other comparative-historical studies, process analysis is used to discredit an inference derived from statistical research. For example, although regression studies of the effect of colonialism on economic prosperity suggest that the identity of the colonizing nation (e.g.,

⁹⁴ J.H. Goldthorpe: Current in comparative in microsociology: a debate on methodological issues. *Comp. Soc. Res.*16, p.149.

⁹⁵ D. Rueschemeyers and J. D. Stephens: Comparing historical squencies- a powerful tool for casual analysis.*Comp. Soc. Res.* 17, pp55-72.

⁹⁶ A. Bennett and A. George: An alliance of statistical and case study methods: Research on the inter-demographic peace. *APSA/CP: Newsl. APSA Organ. Sect. Comp. Polit.* 9(Winter), pp 9-12.

Britain, Spain) is inconsequential, comparative-historical research that examines processes over time argues that the effects of colonialism vary greatly across different colonizers.⁹⁷ More commonly, process analysis serves to modify-not reject-statistical findings. Sometimes these studies better specify the context within which a statistical relationship can be expected to operate. For example, O'Donnell's famous analysis of authoritarianism in Latin America suggests that economic development will not be associated with democracy among Latin American countries seeking to move toward heavy industrialization.⁹⁸ Other studies better specify what statistical tests can and cannot explain. For example, Skocpol's investigation of the early U.S. welfare state suggests that statistical studies are helpful in accounting for raw levels of social spending but often are much less effective at explaining the timing and content of social policy.

Finally, beyond using process analysis to assess intervening sequences, comparative-historical researchers employ this mode of analysis to test the implications of hypotheses developed through cross-case comparisons. In effect, they ask themselves, *"If my cross-case hypothesis IS indeed true, what other evidence should I find at the within-case level?"* This "other evidence" has additional implications for the theory, thereby greatly increasing the number of cases in what may have initially been conceived of as a small-N study.⁹⁹ For example, Skocpol's early work uses process analysis to assess the hypothesis that ideologically motivated vanguard movements are necessary for social revolutions in agrarian-bureaucratic societies. In effect, she asks,

"If these movements are necessary for social revolution, what evidence should be present within my cases?"¹⁰⁰

⁹⁷ J. Mahoney: Strategies of causal assessment in comparative historical analysis, pp. 337-72.

⁹⁸ G. O`Donnell: Modernization and Bureaucratic-Authoritarianism: Studies in South American Politics, p. 58.

⁹⁹ D.T. Campbell: "Degrees of Freedom" and the case study. Comp. Polit. Stud.8, pp. 178-93.

¹⁰⁰ T. Skocpol: Protecting Soldiers and Mothers: The political origins of social policy in United States, pp. 60-67.

She argues that one should observe vanguard movements actually helping to create or substantially maintain the political crises surrounding social revolutions. Yet, in fact, she finds that these movements are extremely marginal to the central politics of revolutions, emerging on the scene very late to take advantage of situations they did not create. Hence, she rejects the hypothesis that ideologically motivated vanguards are necessary for social revolution.

To conclude, although process analysis is not often discussed in mainstream methodological circles, it represents an extremely powerful tool for hypothesis testing in comparative-historical analysis. It dramatically increases the probability that a given hypothesis will be falsified. And when combined with cross-case comparison, it can greatly strengthen one's confidence that an ¹⁰¹observed association reflects causation.

2.3.2 Sequence and Duration Arguments

Social scientists often formulate "thick theories" defined by complex arguments about sequence and duration. For example, in the field of comparative-historical analysis, researchers commonly argue that a given variable may have different-even opposite-effects, depending on its timing or duration.

¹⁰²Yet mainstream social science methods are not well-suited for the analysis of these kinds of temporal arguments. Rather, in part because of data limitations, conventional statistical methods are normally used to test only "thin theories"-i.e., relatively simple theories that do not show a nuanced sensitivity to time or place. Hence, researchers often must turn to comparative-historical methods to assess the most interesting theories in the social sciences.

¹⁰¹M. Coppedge: Thickening thin concepts and theories: combining large and small in comparative politics. *Comp. Polit.* 31, pp. 467-76.

¹⁰²R. Aminzade: Historical sociology and time. *Sociol. Methods Res.* 20, pp. 456-80

Sequence arguments assume that the temporal location of events affects their impact on outcomes of interest. Tilly puts it as follows: "*When things happen within a sequence affects how they happen*".¹⁰³ Comparative-historical analysts often place great explanatory importance on early events within a sequence, arguing that these events decisively shape subsequent causal trajectories. Analysts may be especially interested in early events that are characterized by relative "openness" or "contingency"¹⁰⁴. These events are intriguing because they show how [mal] outcomes depend on the occurrence of distant historical events that were not expected to occur.

A significant literature in economics, political science, and sociology has sought to codify the various tools of analysis used to study these "path-dependent" sequences.¹⁰⁵ Much of this work focuses on initial outcomes during critical juncture periods. In "self-reinforcing" sequences, these initial outcomes trigger positive feedback or increasing returns, such that the outcome is reinforced over time, making it difficult or impossible to reverse direction. For example, this approach characterizes Roy's study of the endurance of the large industrial corporation in the United States, where the ability of economic elite to reinforce its power sustained path dependence.¹⁰⁶

Analysts are also often interested in "reactive sequences," whereby an initial outcome triggers a chain of temporally ordered and causally connected events that lead to a final outcome of interest. These sequences are characterized by tight causal linkages that are not easily disrupted, such that A leads to B, which leads to C, which leads to D, and so on until one arrives at Z, or the logical termination point of the sequence. For instance, Isaac *et al.*

¹⁰³ C. Tilly: *Big Structure, Large Processes, Huge Comparisons*, p.33; A. Abbott: *Time Matters; On Theory and Method*, p. 14.

¹⁰⁴ A. Abbott: *Time Matters: On Theory and Method* p.15.

¹⁰⁵ E. Clemens and J.M. Cook: *Politics and Institutions: Explaining durability and change*. *Annu. Rev. Sociol.* 25, pp. 441-66.; K. Thelen; *How institutions evolve: insights from comparative historical analysis*, pp. 208- 40.

¹⁰⁶ W. G. Roy: *Socializing Capital: The Rise of the Large Industrial Corporation in America*, pp 44-49..

use this logic to link the death of Martin Luther King, Jr. with the expansion of race-based poor relief in the United States.¹⁰⁷

Although path-dependent sequences raise important theoretical issues, they also demand the use of specific methods, making their analysis a potential source of methodological innovation. First, by exploring the issue of critical junctures and turning points, analysts have greatly advanced the use of counterfactual analysis for hypothesis testing in the social sciences.¹⁰⁸ Pathdependent researchers use counterfactual analysis in evaluating the argument that the selection of a particular event from a menu of possible events has a decisive long-run impact. The counterfactual assumption is that if an alternative event had been selected at this early stage, the sequence would have unfolded in a radically different manner. To evaluate counterfactual claims like these, methodologists have developed explicit criteria, including clarity, logical consistency, historical consistency, theoretical consistency, and projectability.¹⁰⁹

Second, the concern with path dependence has led comparative-historical methodologists to explore new techniques for analyzing complex nonlinear patterns. One example is the debate over whether historical narrative can map the causal structures suggested by chaos theory.¹¹⁰ This debate speaks to more general work on the use of narrative for the analysis of causal processes, including Abbott's¹¹¹ narrative positivism, Griffin's¹¹² event-structure analysis, Sewell's¹¹³ causal narrative, and Stryker's¹¹⁴ strategic narrative. Between them, these contributions offer new ways for codifying complex narrative structures, including ideas for inferring causation by comparing narratives across cases. The discussions also provide tools for incorporating notions of necessary and sufficient

¹⁰⁷ L.W. Issac et al: Analyzing historical contingency with formal models: the case of the 'relief explosion' and 1968. *Social Methods Res.* 23pp. 114-41.

¹⁰⁸ J.D. Fearon: Counterfactuals and hypothesis testin in political science. *World Polit.*43,pp.577-92.

¹⁰⁹ P. E. Tetlock and A, Belkin: Counterfactual thought experiments in world politics: logical, methodological, and psychological perspective, pp. 1-38.

¹¹⁰ L. Glass and M.C. Mackey: *From Clocks to Chaos: The Rhythms of Life*, p.201.

¹¹¹ A. Abbott: *Time Matters: On Theory and Method*. Chicago, p.46.

¹¹² L.J. Griffin: Narrative, event- structure, and casual interpretation in historical sociology. *Am. J. Sociol.* 98, pp.1094-133.

¹¹³ W.H. Sewell: Three temporalities: towards an eventful sociology, pp. 245-50.

¹¹⁴ R.Stryker: Beyond history versus theory: stratergic narrative and sociology explanation. *Social Methods Res.* 24, pp.304-52.

causation as central building blocks in narrative. For example, Griffin's event-structure analysis explicitly treats each event in a narrative as necessary for subsequent events.¹¹⁵

Looking beyond path-dependent arguments, the comparative-historical literature presents fresh ideas for the study of duration and conjuncture.¹¹⁶ With duration arguments, scholars explore the causes and consequences of the length of a given process or variable.¹¹⁷ For example, Collier and Collier examine how the duration of labour incorporation periods shapes party system dynamics in Latin America.¹¹⁸ Likewise, Tilly's analysis of state making is centrally concerned with explaining the pace at which modern states were formed in Europe. Within the framework of duration arguments, a "conjunctural" analysis considers specifically the intersection point of two or more separately determined sequences.¹¹⁹ For example, in Moore's classic study, one major sequence involves a series of events leading to the development of commercial agriculture. Another major sequence of events involves the development of political crises that challenge agrarian-bureaucratic states.¹²⁰ In Moore's framework, the relative timing of the intersection of these two sequences can have an important effect on the specific modernization route that a country follows.

As a final note, it is worth emphasizing again that analysts outside of the field of comparative-historical analysis have their own tools for studying temporal processes. However, these analysts can use these tools only insofar as they formulate temporal hypotheses and have access to data to test them. The fact that comparative-historical

¹¹⁵ L.J. Griffin: Narrative, event-structure, and casual interpretation in historical sociology. *Am. J. Sociol.* 98, pp 1094-133.

¹¹⁶ A.S. Zuckerman: reformulating explanatory standards and advancing theory in comparative politics, pp. 275-310.

¹¹⁷ R. Aminzade: Historical sociology and time. *Sociol. Methods Res.* 20, pp. 456-80.

¹¹⁸ R. B. Collier and D. Collier: *Shaping the Political Arena: Critical Junctures, the Labour Movement, and regime Dynamics in Latin America*, p. 467.

¹¹⁹ C. Tilly: *Big Structure, Large Process, Huge Comparisons*, p. 33; A. Abbott: *Time Matters: On theory and Method*, p. 18.

¹²⁰ B. Moore: *Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World*, pp. 34-46.

analysts trace their variables over time makes them especially likely to notice temporal effects and then actually study them in their substantive research.¹²¹

2.4 Tools for descriptive inference

Although descriptive inference receives second billing next to causal inference in contemporary social science, it is still regarded by all social scientists as a fundamental component of research. In statistical research, analysts use well-known techniques for summarizing the characteristics of large populations from samples¹²². Less widely recognized, comparative-historical researchers draw on their own distinctive tools for concept analysis and measurement.

2.4.1 Concept Analysis

It is striking that most methodology courses in the social sciences do not include a section on concept analysis. After all, social science knowledge is built around concepts, and the introduction of new ideas into the field often takes place through the creation of new concepts. Indeed, it is impossible to conduct research--or even conceive of a research topic--without concepts.¹²³

Comparative-historical analysis has been a leading site for both the development of new concepts and the creation of new methodologies regarding the use of concepts. In terms of conceptual innovation, comparative-historical researchers have offered leading definitions for many of the most important social science concepts. An incomplete list would include authoritarianism, capitalism, corporatism, democracy, development, feudalism, ideology,

¹²¹ E.S. Lieberman: Casual inference in historical institutional analysis: specification of periodization strategies. *Como.Polit.Stud.* 34, pp. 1011-35.

¹²² R.B. Collier D. Collier: *Shaping the Political Arena: Critical Junctures, the Labour Movement, and Regime Dynamics in Latin America*, p. 469.

¹²³ J. Gering: *Social Science Methodology: A Critical Framework*, pp. 35.

informal economy, liberalism, nationalism, revolution, socialism, and the welfare state.¹²⁴ In conjunction with typological analysis, comparative-historical researchers also have formulated many important conceptual distinctions, including types of regimes (e.g., democratic, authoritarian, totalitarian), revolutions (e.g., political, social, anticolonial), states (strong, weak, predatory, developmental), and welfare systems (Christian, liberal, social-democratic), to name only a few.¹²⁵

The close examination of cases in comparative-historical research stimulates this conceptual development. Because analysts study cases in great detail, they almost inevitably match background understandings of concepts with fine-grained evidence from their cases. After many rounds of iteration, this process can lead to new conceptual understandings and perhaps the formation of entirely new concepts. Furthermore, because comparative-historical researchers usually do not begin with predefined cases, they must develop their own answer to the question, "What is this a case of?" In answering, they may define new conceptual categories or revisit received understandings of existing categories in light of new evidence.¹²⁶

Perhaps because conceptual innovations are so prominent in this field, comparative-historical methodologists have been at the forefront of a small but growing literature on methods of concept analysis. The starting point for much of this literature is Sartori's work,¹²⁷ which explores concept formation through "checklist" definitions that treat conceptual attributes as individually necessary and jointly sufficient for conceptual membership.¹²⁸ Drawing on the idea of a taxonomical hierarchy, Sartori famously proposed that there is an inverse relationship between a concept's intension (i.e., number of defining attributes) and its extension (i.e., number of cases to which it refers). For example, democracy might be defined by (a) free and fair elections, (b) universal suffrage, and (c)

¹²⁴ J. Gerring: Putting ordinary language to work: a min-max strategy of concept formation in the social sciences. *J. Theor. Polit.* 15, pp. 201-32.

¹²⁵ G. Goertz: The methodology of necessary conditions. *Am. J. Polit. Sci.* 44, pp. 844-58.

¹²⁶ C.C. Ragin: *The Comparative Method: Moving Beyond Qualitative and Quantitative Strategies*, p. 179.

¹²⁷ G. Sartori (ed): *Social Science Concepts: A Systematic Analysis*, pp. 245-80

¹²⁸ C. K. Ogeden: *The Meaning of Meaning*, pp. 29

broad civil and political liberties.¹²⁹ If one removed universal suffrage from the definition, the number of cases of democracy would be expanded. By contrast, if one added the criterion of socioeconomic equality, the number of cases would be diminished. This inverse relationship provides important insights for avoiding "conceptual stretching" and for situating concepts within their broader semantic fields.

More recently, Collier and collaborators have productively drawn on ideas developed in cognitive science and linguistic philosophy to explore alternative approaches to concepts.¹³⁰ One example is Wittgenstein's idea of family resemblance, which assumes that no single attribute is shared by members of a category, though the members resemble one another on at least some attributes. For instance, Hicks *et al.* code a country as a "welfare state" if it adopts at least three of four classic welfare programs: (a) old age pensions; (b) health insurance; (c) workman's compensation; and (d) unemployment compensation. In this framework, no single condition is necessary for a welfare state, the presence of any three conditions is sufficient for a welfare state, and thus all welfare states will share at least two conditions. To logically analyze these kinds of family resemblance concepts, ideas of necessary and sufficient conditions are essential.¹³¹

Other approaches to concept formation include techniques for analyzing "radial categories" and the use of a "min-rmax strategy." With radial categories, the meaning of a category is anchored in a central example that serves as a best case, or prototype, of the category.¹³² This central example acts like a gestalt to which other cases can be compared. For example, when determining whether cases in the contemporary Third World are social revolutions, scholars may use the French or Russian Revolution as a prototype, and then assess the degree to which the characteristics of the Third World cases overlap with the

¹²⁹ G. Sartori (ed): *Social Science Concepts: A Systematic Analysis*, pp. 245-80.

¹³⁰ G. Lakoff: *Woman, Fire, and Dangerous Things: What Categories Reveal About the Mind*, pp. 49-57.

¹³¹ A.M. Hicks: *Qualitative comparative analysis and analytical induction: the case of the emergence of the social security state*. *Sociol. Methods Res.* 23, pp. 86-133.

¹³² G. Lakoff: *Women, Fire and Dangerous Things: What Categories Reveal About the Mind*, pp. 49-57.

prototypical example. Researchers may also use "ideal types" in this fashion; that is, they compare real cases to an idealized central example that serves as a best or perfect instance of the type in question. Although this central example may not exist empirically, cases that are closer to it represent better instances of the category.

A min-max strategy to concept formation combines this specific usage of ideal type with what is known as a minimal definition.¹³³ Whereas ideal types normally view a category in light of all major attributes associated with the category, a minimal definition incorporates only those attributes that are shared by all cases of the category. The min-max strategy therefore defines a concept in light of both its minimal definition and its ideal-typical definition. For example, the minimal definition of "culture" might include the characteristics ideationally symbolic, patterned, and shared. The ideal-typical definition, however, would include many more characteristics, such as enduring, coherent, differentiated, and holistic.¹³⁴ The min-max approach thus seeks to deal with our most contested and challenging concepts by simultaneously offering concise and comprehensive definitional options.

Methodologists have also been interested in developing solid criteria for evaluating concepts. Gerring in particular suggests that the "goodness" of a concept can be evaluated along eight dimensions: coherence, operationalization, validity, field utility, resonance, contextual range, parsimony, and analytic/empirical utility.¹³⁵ These dimensions usefully highlight many of the trade-offs that researchers face when formulating concepts. For example, achieving operationalization forces researchers to make sure that their conceptual definitions correctly identify the right phenomena in the world. Yet, pursuing this goal might come at the expense of resonance, which involves striving to develop conceptual

¹³³ J. Gerring: Putting ordinary language to work: a min-max strategy of concept formation in the social sciences. *J. Theor. Polit.* 15, pp. 201-32.

¹³⁴ *Ibid.*

¹³⁵ J. Gerring: *Social Science Methodology: A Critical Framework*, p.60.

definitions that make intuitive sense.¹³⁶ When scholars associated with a given research tradition favour one dimension at the expense of several others, they run the risk of formulating concepts that are on balance impoverished.

2.4.2 Measurement Validity

Measurement consists of two basic procedures: (a) operationalization, or the process of developing indicators with which to measure a concept; and (b) scoring cases, or the process of applying indicators to the cases being analyzed.¹³⁷ Measurement validity depends on analysts avoiding error for both of these procedures. Although comparative-historical researchers do not always use numerical coefficients when measuring concepts, their close examination of cases nevertheless affords distinct advantages for achieving measurement validity.¹³⁸

First, researchers can easily move back and forth between conceptual definitions, indicators, and scores for cases in many rounds of iteration. Operational definitions and indicators can be refined in light of initial efforts to score cases; likewise, conclusions about the inadequacy of indicators can lead scholars to revisit the very definition of the concept being measured. For example, Skocpol did not simply assume a definition of social revolution, develop operational attributes, and then mechanically apply them to cases.¹³⁹ Rather, she worked in part inductively, moving from her knowledge of actual cases to operational indicators and a formal definition.

No doubt many initial operational definitions were thrown out when she discovered that they generated case scorings that were not appropriate. Others proved useful, though

¹³⁶ D. Berg-Schlosser and G. DeMuer: Conditions of Democracy in interwar Europe: a Boolean test of major hypotheses. *Comp. Polit.* 26, pp. 253-79.

¹³⁷ R. Adcock and D. Collier: Measurement validity: a shared standard for qualitative and quantitative research. *Am. Polit. Sci. Rev.* 95, pp. 529-46.

¹³⁸ *Ibid.*

¹³⁹ T. Skocpol: *States and Social Revolutions: A Comparative Analysis of France, Russia, and China*, pp. 234-239.

perhaps had to be modified to consider particular cases. This process of iterated matching is almost inevitable in comparative-historical research.

Second, with respect to the key procedure of scoring cases, comparative-historical researchers can assess the meaning of indicators across diverse contexts. For example, one common indicator of democracy concerns the extent of the suffrage. Yet, across different time periods, a given level of suffrage may mean different things.¹⁴⁰ For instance, some scholars believe that the absence of female suffrage has different implications for democracy today than it did in the late nineteenth century. Or, to use an example from the comparative-historical literature on social provision, the debate over whether the United States was a welfare laggard depends in part on how one interprets the meaning of veteran's benefits and support for mothers and children.¹⁴¹

The fact that indicators can have different meanings across contexts suggests the importance of using context-specific indicators.¹⁴² In the comparative-historical literature, for example, one solution to the problem of measuring democracy mentioned above has been to operationalize the concept in light of the norms governing a given historical period.¹⁴³ Under this approach, a case in which women cannot vote may be considered a democracy in the late nineteenth century but not a democracy in the late twentieth century. Or, in the comparative study of labour politics, Locke and Thelen show that global pressures to decentralize capital-labour bargaining arrangements mean very different things in Sweden, the United States, and Germany.¹⁴⁴ System-specific measures are required to accommodate these diverse meanings and to avoid inappropriately categorizing the three nations as similar with respect to globally-induced decentralization.

¹⁴⁰ J. Gerring: *Social Science Methodology: A Critical Framework*, p. 66.

¹⁴¹ R. Stryker: *Beyond history versus theory: strategic narrative and sociology explanation*. *Social Method Res.* 24, pp. 304-52.

¹⁴² A. Przeworski and H. Teune: *The Logic of Comparative Social Inquiry*, pp. 102-114.

¹⁴³ D. Collier. And S. Levitsky: *Democracy with adjectives: conceptual innovation in comparative study*. *World Polit.* 49, pp. 430-51.

¹⁴⁴ R. M. Locke and K. Thelen: *Apples and oranges revisited: contextualized comparisons and the study of comparative labor politics*. *Polit. Soc.* 23, pp. 337-67.

To summarize, leading methodological textbook discussions of descriptive inference often focus on statistical sampling procedures and measurement narrowly defined as operationalization. This discussion of comparative-historical analysis suggests that methodologists should broaden their understanding of descriptive inference to include concept analysis and measurement issues pertaining to the ways in which empirical data are used to code cases and modify indicators and operational definitions in the course of research. This broader understanding of descriptive inference could enrich all research, whether qualitative or quantitative.

2.5 Conclusion

In the context of a comparison of the Oyo and Zulu empires, it could be concluded that comparative-historical analysis is appreciated for its contributions to substantive knowledge generation in the social sciences.¹⁴⁵ However, the methods employed in this literature have not had a large impact in the general field of methodology, with two unfortunate effects. First, comparative-historical methods are not widely taught in most African universities, and researchers often are not formally trained to use them. As a result, even some of the best work in the field does not show a high level of methodological self-consciousness, and almost all work could be improved by greater methodological explicitness. Second, because many statistical researchers have not been exposed to comparative-historical methods, they lack the background for understanding and evaluating this work. In addition, the advice they do offer to comparative-historical analysts is sometimes not appropriate.

The remedy to these problems involves assigning comparative-historical methodology a more important place within methodological circles. A first step is for statistical

¹⁴⁵ J. Mahoney and D. Rueschemeyer: *Comparative historical analysis: achievement and agendas*, pp. 3-38.

researchers to recognize that quantitative analysis is not the only or necessarily the best way to generate valid causal and descriptive inferences; in fact, for many research questions, one can and will do better with comparative- historical methods. If this point could be recognized, one might realistically hope for a more balanced approach to methodology within the social sciences. For example, more top graduate programs might require a qualitative methods course in which comparative-historical methods have a leading place.¹⁴⁶ Likewise, more departments might actively seek applicants trained in comparative-historical methodology for openings in the field of methodology. And methodological journals and associations now dominated by statisticians would surely find more room for comparative-historical methodologists. In the meantime, though, this article has sought to encourage statistical methodologists who are skeptical about the contributions of comparative-historical methods to rethink this skepticism or formulate more sustainable arguments to justify the skepticism.

¹⁴⁶ P. Hall.: *Aligning ontology and methodology in comparative politics*, pp. 373- 406.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

This chapter simplifies the methodology of the research. To achieve this, the chapter is structured into the following sections: Introduction, Research Designs, Population of the Study, Sample and Sampling Techniques, Instruments, Procedure for Data Collection and Data Analysis Method. Research is important to every profession. It is often referred to as the basis of the development of a profession Bless and Higson asserts that every profession needs knowledge on which to base his practice. Scientific knowledge provides a particularly solid foundation it is an integral part in humanities, cultural history, education, business and management. ¹⁴⁷Research has been defined by various scholars. Weman, Kauger and Michell define it as a systematic process of collecting and analysing information to increase the understanding of a phenomenon under study. They were of the opinion that research as a process involves obtaining scientific knowledge by means of various objective methods and procedures. Burns and Ritchie opine that, research is a diligent systematic enquiry to validate and refine existing knowledge and generate new knowledge. Contributing to this, Creswell claims that research method involves the techniques of data collection, analysis and interpretation that a researcher proposes for his/her study.¹⁴⁸

Based on the foregoing definitions, research can be described as systematic inquiries or investigation in order to establish facts and bring out a new finding. With regard to these definitions, the following can be inferred as some of the characteristics of research:

1. The results of a research are to bring about increase in knowledge (Burns and Ritchie).

¹⁴⁷ .Bless, C., & Higson-Smith, C. Fundamentals of Social Research Methods: An African Perspective. Cape Town: Juta 2010, P. 128

¹⁴⁸ .Welman, J. C, Kruger S.J, & Mitchell, B. Research Methodology. Cape Town: Oxford University Press, 2005, P.225

2. Research begins with a question or a problem (Leedy).
3. Searching, discovery or enquiries are some of the methods by which knowledge is obtained (Lincoln and Guba,).
4. In research, the search is always systematic and diligent, which implies the need for planning, organisation and persistence (Burns and Ritchie; Leddy and Ormond).
5. Research is a process (Bryman).
6. Research is a scientific process (Barton).

It can be summarised that the main objective of a research is to find out new knowledge.

3.2 Philosophical paradigm

Philosophical ideas remain largely hidden in research and the term has been given various meaning by different scholars Creswell, describes philosophical worldviews as a set of beliefs that guide action to worldview as paradigms. Creswell describes philosophical worldviews as a general orientation about the world which examines the nature of research that a researcher is investigating. Creswell goes further to say that a researcher can use any of the term to inform his/her study because research paradigm directs the method in which research will follow.

Creswell explains that in picking any of these concepts, the researcher needs to consider the following; nature of the research, discipline orientations, students and supervisors inclinations and past research experience. Moody suggests that the term paradigm is commonly used inresearch because it assists a researcher to organise his/her thinking. Based on Moddys' assertion, the research would adopt the concept philosophical paradigm.¹⁴⁹

¹⁴⁹ .Cresswell, J.W. Research Design: Qualitative, Quantitative and Mixed Methods approaches. London: Sage publication, 2014, Pp 116-118.

The concept paradigm originated from the Greek word ‘paradeigma’ which simply denote pattern. Paradigm was first used by Thomas Kuhn in 1962. Kuhn defines paradigm as “an integrated cluster of substantive concepts, variables and problems attached with corresponding methodological approaches and tools...” He explains further that, paradigm is a research culture that lay emphasis on beliefs, values and assumptions, which a community of researchers has in common, regarding the nature and conduct of research. Silverman defines paradigm as a way of examining a natural phenomenon that encompasses a set of philosophical assumptions that guide one’s approach to an enquiry.

150

However, a research paradigm is a set of philosophical assumptions about fundamental aspects that give rise to a particular worldview. Moody states that, a research paradigm assists researcher to think logically, presents ways of observing and assists in the manner of interpreting. Likewise, Creswell views research paradigm as knowledge claims that a researcher will employ to commence a study. Research paradigm is a model shared assumptions, or an entire system of thinking about some aspect of the world.¹⁵¹

Grix highlights the following as the benefits of research paradigms, in academic research:

1. It assists the researcher to see how close many of the perspectives in different academic disciplines are.
2. It provide adequate familiarity with language, terms, potential and various core texts, associated with the main perspectives, that a researcher may likely face.

From the foregoing, it can be said that research paradigm is a pointer and directory that guides a study and also assists the researcher to focus, particularly on the research methodology, topic and assumptions to employ. Hakim opines research paradigm as frequently employed in humanities and social science related research is positivist; post

¹⁵⁰ .Silverman, D. *Qualitative Research: Theory, Methods and Practice* (2nd edn). London: Sage Publication, 2004 P. 188.

¹⁵¹ .Neuman, W. L. *Social Research Methods: Qualitative and Quantitative Approaches*. (6th edn) Boston: Pearson, 2011, Pp.86-88.

positivist, interpretive and critical social theory. From this, it can be said that, paradigm is a belief that guide how empirical knowledge is created.¹⁵²

There are various schools of thought on the categories of research paradigms, in academic research. Scotland (2012) notes that, every paradigm has its own ontological and assumptions, as well as methodological approaches. Creswell and Neuman opines that philosophical paradigm is part of methodology in academic research.

Grix observes that, philosophical paradigm is an approach to academic research. Researchers' contradictory ontological, philosophical and epistemological positions often lead to different research approaches, toward phenomenon. He note that, philosophical paradigm is an approach that examines research problem and employs various approaches available to investigate and understand the problem rather than focusing on the method.¹⁵³

Creswell categorise research paradigm into three. These are Ontology, which is a patterned set of assumptions about reality; Epistemology, which is the knowledge of that reality; and Methodology which is the particular ways of knowing about that reality. It can be deduced from the foregoing that research has three processes which are ontology, epistemology and methodology. He goes further to say that a research paradigm is a combination of interrelated practices and thinking that define the nature of these three research processes. The three categories of research paradigms to include positivism, critical theory and interpretive paradigm. On the other hand, Creswell categories research paradigms into four which are constructivism, post positivism, transformative and pragmatism.¹⁵⁴

The interpretive approach to social science research emphasise the importance of the insider's viewpoint to understand social reality. The interpretive approach has the tenet that knowledge and meaning are based on interpretations which does not involve any objective knowledge and is independent of thinking and human reasoning. This implies

¹⁵² . Hakim, C. Research Design: Strategies and Choices in the Design of Social Research. London: Allen & Uniwin, 1987, P 198.

¹⁵³ . Grix, J. The foundations of research. London: Palgrave Macmillan, 2004, P.116.

¹⁵⁴ .Cresswell, J.W. Research Design: Qualitative, Quantitative and Mixed Methods Approaches. London: Sage publication, 2014, P.228

that, the interpretive approach provides meaning to event, through the meaning that people give to them.

Reeves and Hedberg opines that interpretive paradigm examines and put research analysis in context. Not only that, it lays more importance on understanding the world, from bias views of individuals and they employ meaningful, interviewing or participant observation in getting information.¹⁵⁵ As a result, interpretive research does not consider dependent and independent variables but focuses on the detail complexity.

Cohen lists various characteristics of interpretive approach, to include accommodating naturalistic methods, which include interviewing, observation and analysis of existing text. Brink et al describe positivism paradigm as the research which are fashioned toward quantitative research. In the same view, positivism is related and associated with quantitative research, which focuses on empirical studies and establishes facts on evidence that is valid and reliable in terms of existence of phenomena rather than generalisation.¹⁵⁶ He lists the premises on which positivism research is based. These are:

1. Realism which believes that the world exists independently of our knowledge of it;
2. Employment of scientific methods to analyse the social world;
3. Giving explanation in social research as opposed to understanding through the conduct of scientific investigation;
4. Allowing observation, verification and empirical practice; and
5. Promoting objectivity in research.

All these imply that, positivism approaches, in conducting research, encourage precision and empirical method, in the gathering of data in social science research, since positivism is a way of conducting research with more emphasis on observable facts. Positivism is the

¹⁵⁵ .Reeves, T. C. and Hedberg, J. C. Interactive Learning Systems Evaluation, Educational Technology Publications, and Englewood New Jersey: Cliffs 2003, P.158.

¹⁵⁶ .Cohen, L., Manion, L., and Morrison, K. Research Methods in Education 6th ed. London: Rutledge, 2007, P. 243.

research method that combines deductive logic with precise empirical observations of individuals, particularly for discovering and confirming probabilistic causal laws, which is very useful to predict general patterns of human activity. It can be said that, positivism approaches to research places emphasis on empirical theory in the creation of knowledge.

The advantage of positivism, in the field of social science research, is that it values precision, exactitude and power of prediction, which is relevant to social sciences research which can be done through observation and the measurement of objective reality. Maree states that, it produces precise, verifiable, systematic and theoretical answers to research questions.¹⁵⁷ He goes further to say that, employing scientific method provides accurate and unbiased answers in research conduct, which does not depend on the perception of the researcher.

However, the study employs the post positivists' paradigm which Maree describes as a research tradition, which occupies the space between positivism and constructivism. Seale notes that, post positivism is a research paradigm useful for scholars that have interest in some aspects of positivism, such as quantification and at the same time incorporate interpretive concerns around subjectivity. Brink et al, identify the characteristics of post positivist research. They claim that, academic research is wide rather than specialised and that, theory and practice cannot be separated in research because a lot of things make up research. This implies that, post positivism is a pragmatic combination of qualitative and quantitative methods. Schratz and Walker also opine that, the researcher's motivation for and commitments to studies are very important to the project and that there is a need to employ various methods and techniques for collecting information for a research.¹⁵⁸ This study would employ pragmatism paradigm.

In addition, the researcher considered the complex nature of the research study, and there was no single research paradigm, that could successfully deal with all of the required

¹⁵⁷ . Maree, K. *First Steps in Research*. Pretoria: Van Schaik Publishers, 2011. Pp. 212-214.

¹⁵⁸ . Schratz, M. & Walker, R. (1995). *Research Social Change: New Opportunities for Qualitative research*. London: Routledge, 1995, P.133.

methodological aspects. As a result, the researcher found out that, it is necessary to combine positivist with interpretive paradigm. The blending of the two research approaches provided the study with the capacity to statistically analyse the empirical data and provide adequate explanations on access, benefits and factors influence use of clinical informatics. The discussion that comes after this gives an impetus on how the paradigm and methodological approaches were used in the study.

3.3 Research Method / Approach

The research approach is a way, in which research strategy of enquiry moves from the underlying assumptions to research design and data collection (Myers, 2009). Explains that, research approach is one of the elements in the research framework that involves data collection, data analysis and interpretation, which researchers propose for their studies. Appropriate research approaches are required to conceptualise research problems and describe the phenomena that are being investigated. In selecting appropriate research approach for a study is a very important issue because it is the pillar on which the dissertation stands. He goes further to say that, the nature of the study will determine the approach to be used in order to underpin the study.¹⁵⁹ The purpose of research approach is basically to reveal how the investigation would be done and how research problems would be solved.

Neurman highlight various types of research approaches to include quantitative, qualitative and the mixed methods. The choice of a research approach, in academic research, depends on the research problem, data-collection procedure, the research problems, data analysis plans, the paradigm chosen and the research design to be employed. The quantitative approach uses techniques that apply more numerical data. Quantitative approach includes ways in which the research identifies general patterns and relationships among variables, testing hypotheses and theories in order to make predictions based on the results, quantitative approach is basically for testing objective theories by examining the

¹⁵⁹. Myers, M. D. Qualitative Research in Business and Management. London: Sage publisher, 2009, P. 76.

relationship among variables. He goes further to say that, the variables can be analysed through the use of various statistical tools.¹⁶⁰

Grix states the various common methods associated with quantitative research. These are social surveys, official statistics and structured observation. Quantitative research approach attempts precise measurement of something and it concerns more on questions such as how much, how often, how many, who and when. Grix observes that, quantitative approach are interested in comparison and causality between independent variables which cause variance or change in the dependent variable and they generally use a large number of cases. Quantitative approach is very useful for testing objectives theories by examining the relationship among variables.¹⁶¹

A qualitative approach is seen by many as the opposite of quantitative research. It is usually a depth investigation of knowledge in various ways such as observation and interview. Ragin states that, qualitative approach is an approach for exploring ways an individual or groups ascribe human problems.¹⁶² In addition, qualitative approach aims at examining the many nuances and complexities of a particular phenomenon. There are various methods associated with qualitative approach which include interview and observation. This approach is tailored towards the certain research designs, such as case study, ethnography, grounded theory and action research. There are many ways of collecting data in qualitative approach. Some of these include focus group, observation, interview and documentary study. The commonly used data analysis techniques are content analysis and observations. In this approach data is commonly collected from various sources such as people, government documents, organisation, texts, objects, and events.

¹⁶⁰ . Neuman, W. L. Social Research Methods: Qualitative and Quantitative Approaches. Boston: Allyn and Bacon, 2000, P.62.

¹⁶¹ .Grix, J. The foundations of research. Palgrave, Basingstoke: Hound mills, 2012, P. 138.

¹⁶² . Ragin, C. C. Constructing Social Research: The Unity and Diversity of Method. London: Pine Forge Press. 1994, P. 225.

Schatz, M., and Walker, R. list various features of qualitative research which include belief in multiple realities and the involvement of participants in the study and in the research processes. Analyses of data are being done in a literary style which involves participant commentaries. describes qualitative research as a research methodology that understands social and cultural environment, which underlie various behavioural patterns and is basically concerned with the reason for action. This implies that qualitative research is more people-oriented, because, it interacts with people and observes them in their natural environment.¹⁶³ Qualitative research is more concerned with the use of raw data, because it employs the inductive approach which emphasises the development of insights and generalization of the study.

On the other hand, Neuman claims that quantitative research design is primarily used to collect data in numerical forms. Quantitative research is very useful for large volumes of data, in which sampling can be generalised in order to represent the total target population. These opinions were supported by Neuman who affirms that quantitative research is more focused on measurement and sampling procedure because it is deductive in nature and lays more emphasis on adequate planning, prior to the commencement of data collection.¹⁶⁴ He explains the relationship between qualitative and quantitative approaches. He explicates that, the two approaches are used to gather data, but the difference can be noticed in terms of data gathering methods, employment of logic, different research paradigm, methods of analysing data and ways of presenting the research findings.

The justification for the use of qualitative and quantitative methodologies in this study is based on their various benefits Edmonds and Kenndy assert that both quantitative and qualitative methods are very useful because they complement each other. They further note that qualitative method provides insightful and in-depth clarification while quantitative method provides numerical data needed to test required objectives in research. However,

¹⁶³ .Schatz, M., & Walker, R. Research Social change: New Opportunities for Qualitative Research. London: Routledge, 1995, P. 118.

¹⁶⁴ . Neuman, W. L. Social Research Methods: Qualitative and Qualitative Approaches.(8th) Harlow: Pearson Education Limited, 2014, P.218.

this study employed qualitative and quantitative methods to investigate and provide a comprehensive analysis in order to achieve the research objectives.¹⁶⁵ Both quantitative and qualitative methods in this research would allow for adequate exploratory description and at the same time full explanation of each of the research questions which would provide accurate research finding. In addition, the study would employ the combination of both qualitative and quantitative methods in order to gather numerical data and interpretive information which would be analysed together to bring out credible results from the study.

In the same vein, Domegan and Fleming claim that adopting both qualitative and quantitative methodologies in cultural comparative related research assist in preventing biases because each method can be used to check the other. This implies that the subjectivity that is associated with qualitative research is reduced by the objectivity of quantitative research. Similarly, the researcher believes that these two methodologies are relevant to the study because comparative study of justice dispensation in Oyo and Zulu traditional administrative structures require an in- depth understanding through the exploration of data as well as the need for the quantification of information.¹⁶⁶ Furthermore, various scholars like Van, Smith and Bryman have argued that the major way of researching into human learning is by employing qualitative and quantitative methods. This study is about pre-colonial, colonial and post-colonial traditional judicial administrative learning, particularly in examining jurisdictional access of civil and criminal cases in customary courts. Qualitative research method is generally concerned with processes while quantitative research is about outcomes.

Another justification for using both quantitative and qualitative methods in this study is to support the submission of Creswell that using the two methods in traditional justice dispensation allows for confirmation and supporting the data collections from the two

¹⁶⁵ .Edmonds, W. A. & Kennedy, T. D. (2010). A Reference Guide to Basic Research Design for Education and the Social and Behavioural Sciences. New York: Pearson Educational Resources Inc, 2010, P.205.

¹⁶⁶ .Domegan, C. and Fleming, D. Marketing Research in Ireland, Theory & Practise. Dublin: MacMillan Gill and MacMillan: , 2007, P,218.

approaches.¹⁶⁷ Likewise, he affirms that the two methods are interconnected, particularly at the level of data collection, study design and data analysis. Based on the foregoing, both the qualitative and quantitative approaches were used in this study for data collection because they complemented each other. This enabled the researcher to gather useful and relevant information from the respondents and give the opportunity to solicit for data from two different directions, allowing the research to be investigative from different viewpoints. Good research often combines both the qualitative and quantitative approaches in order to be more informative. This implies that the study would combine both methods to gather numerical data and interpretive information which would be very useful to examine and analyze the results of the research in order to obtain authentic results.

3.4 Research design

The research design can be described as the overall scheme of plan for the study which includes all ideas, research concepts, variables and their relationships and the appropriate ways of collecting and analysing data, Mugenda describes research design as a procedural plan and arrangement employed by the researcher to provide answers to research questions and research objectives. Research design is the detail outline and planning procedure indicating the order of how an investigation will take place.¹⁶⁸ This includes the types of instrument to be employed, how the data is to be collected and ways of analysing the research data. This indicates that the research design is a framework on which the research is built. Note that for effective research to be conducted, there is need for research design. They go further to say that research design is a mechanism that will provide answers to the research questions and indicate the order of successions of activities in the research outlines. Social science research design can be categorized into two which are experimental and non-experimental.

¹⁶⁷ .Creswell, J. W. Research Design: Qualitative and Quantitative Approaches. London: Sage publication, 2009, P.148.

¹⁶⁸ .Mugenda, A. Social Science Research. Nairobi: applied research and training services, 2008. P. 66

However, in selecting appropriate research design, the following parameters must be put into consideration ; (a) objective of the study (b) information requirement of the researcher (c) nature of the respondents (d) nature of independent variables (d) level of researcher's control over the study under investigation (e) time and financial implication (f) focus on contemporary issues related to the study. The essence of research design is to ensure that the study under investigation is being investigated with appropriate tools for effective research outcome. The purpose of a research design is to identify the ability to plan and structure the research in such a manner that will maximise the validity of research findings, either to minimise or to remove identifiable errors. Bryman notes that research design provides structured plans of action, methods and outlines for conducting research in order to realize research objectives.¹⁶⁹ Research design is the blueprint of a research which includes all the necessary action plans and strategy to be adopted in gathering and analyzing research data.

There are different types of research designs in both qualitative and quantitative designs. These include: experimental, non-experimental and non –traditional. Experimental research is the type of research in which the researchers actively introduce an intervention or treatment. At the same time, experimental research is basically concerned with the testing of hypotheses and establishing causality. However, the study would adopt non-experimental designs. There are many types of non-experimental designs in research literature which include ; descriptive design, survey design simple survey, longitudinal survey, developmental survey, comparative survey, correlation designs, ex-post factor designs, retrospective, prospective, path analysis and predictive. Moreover, Creswell and Vicki categorize them into two. These are descriptive and correlation design. In addition, non-experimental design does not give room for manipulation of the independent variable and does not allow for intervention.¹⁷⁰ This implies that, in non-experimental research,

¹⁶⁹.Bryman, A. *Social Research Methods* (2nd ed). London: Oxford University Press, 2004, P. 238.

¹⁷⁰.Creswell, J. W. & Vicki, C. *Designing and Conducting Mixed Methods Research* (2ndedn). Loss Angeles: Sege Publication, 2011, P.248.

studies are conducted in a natural setting and phenomena are observed as they occurred. The major benefit of non –experimental research is that it describes phenomena, explores and at the same time explains the relationship between variables. Researcher in non-experimental research is regarded as bystander because researcher needs to obtain valid research result; as a result, there is a need for him to consider the extraneous variables that would validate his study.

The justification for using non – experimental design is based on the assertion of Leedy and Ormrod who revealed that non - experimental design does not allow for intervention or control of research setting. This study would be carried among the traditional chiefs in western Nigeria and KwaZulu-Natal in South Africa and the research would examine the phenomena as they occur. This corroborated the submission of Leedy and Ormrod that the major purpose of non-experimental research is to describe phenomena and at the same time explain the relationship between variables.¹⁷¹ This shows that non-experimental design is very useful in creating knowledge in an environment that is unfavourable for experimental research. However, the following factors were considered before selecting research design for the study; the nature of the population, absence of control variable, and the required information which is based on respondents' regarding current phenomena. Based on these justifications, a non-descriptive research design was selected for the study. The research design for this study was a survey which is a form of non-experimental design which involves the use of qualitative and quantitative methods. Descriptive research is synonymous with survey research. This position indicated that the two terms can be used interchangeably.

¹⁷¹ .Leedy, P.D. &Ormrod, J.E. Practical research: Planning and Design Pearson Education: Boston, 2010, P. 112.

3.4.1 Survey research

Survey research is a fact - finding research method that is used to collect data from a sample, to determine the status of the particular population, with respect to one or more variables. Monette, Thomas and Cornell state that survey research assists a researcher to gather relevant information about the target population without undertaking complete enumeration.¹⁷² Burton also describes survey research as the choice of instrument and sampling in academic research. Burton lists various characteristics of survey research to include data collection procedure, sampling method, quantitative, self-monitoring, systematic, impartial representative and theory based. In survey research, researchers select samples of respondents before administering questionnaires or conducting interviews, in order to get information about their attitudes, values, habits, ideas, demographics, feelings, opinions, perceptions, plans and beliefs. Monette et al state various ways by which survey can be conducted.¹⁷³ These include questionnaires, interviews, telephone call and observation. Robson is of the view that, survey is the most acceptable technique for collection of data which is always very useful in seeking data on respondents' beliefs, opinion, attitudes, motivation and behaviour. Being descriptive in nature, it is very useful in obtaining information in order to investigate existing phenomena.

Survey can also be used to explain the existing issues of two or more variables at a particular point in time Mugenda and Mugenda. It is commonly used in applied social science research. Survey research is primarily used by social scientists to collect data because of its flexibility and ability to save time and resources.¹⁷⁴ He also highlights some of the advantages of survey research to academic study. It is identified as being easy to

¹⁷².Monette, D.R., Thomas, J.S. & Cornell, R. D. Applied Social Research: Tools for the Human Services, Fort Worth, TX, Holt, Rinehart, & Winston, 1986, P.252.

¹⁷³.Burton, L. Survey Research: Choice of Instrument, Sample. Blooberg: Johns Hopkins University,2007, P.248.

¹⁷⁴ .Mugenda, O.L. &Mugenda, A.G. Research Methods: Quantitative and Qualitative Approaches. Nairobi: African Centre for Technology Studies, 1999, P. 166.

administer even remotely via the internet, cell phones, by post and email, inexpensive, very useful for large population, easy for software analysis of results and that it could be used for a broad range of data such as attitudes, opinions, belief, values and behaviour. In keeping with the objectives of this research justice dispensation in Oyo and Zulu traditional administrative structures, survey research became relevant because it would not have been possible to collect data from traditional chiefs due to their busy nature. Coupled with limited time and resources, survey research design was used in this research because of reduction in cost, time economy and accessibility. In addition, the use of survey research allows for generalisation from the simple to the rest of the population. The research employed the use of survey research to corroborate the submission of Fowler that, survey research is relevant where there are many objectives and variables to be examined.¹⁷⁵

In addition, the survey research design was used in order to identify problems with current practices concerning traditional justice dispensation among the chiefs of the two Empires. Contributing to this, Frankfort observes that survey research encompasses a wide variety of designs that utilize both quantitative and qualitative methods that will enable researcher to gather information from representative of population which will be of a great benefit to the study.¹⁷⁶ The choice of survey research design in this study was largely informed by the researcher's approach to the study, the form of data that were collected, the sample design and the manners in which the data were analyzed. It enabled adequate investigation into comparative justice dispensation in Oyo and Zulu traditional administrative structures in Nigeria and South Africa. Survey design also provides opportunity for standardized information through the use of questionnaire and interview to solicit for data in order to get accurate result.

¹⁷⁵. Fowler, F. Survey research methods. Los Angeles: Thousand Oak, 2014. P. 169.

¹⁷⁶ .Frankfort-Nachmias, C., and Nachmias, D., (1996). Research Methods in the Social Sciences. London: Arnold, 1996, P. 158.

Another factor that promoted the use of the survey in this study is based on the submission of Cohen, Manion and Morrison that, survey design has ability to provide descriptive and inferential data which can be processed statistically through the use of various statistical tools. The design also encouraged gathering of reliable data through the use of questionnaire and interview question. Triangulation of data allow the study to use multiple sources to draw conclusions on what constitutes the truth about a single phenomenon and at the same time bring clarity and better understanding of the phenomenon.¹⁷⁷ Another justification for using survey method is based on the fact that the method allows for adequate validation of research instruments, through pre-testing, leading to acceptable reliability of the instrument.

3.4.2 Target population

The entire set of elements about which the researcher would like to make generalisations is called the target population. Target population can be described as the entire group of individuals or objects from which researchers are interested in generalising the conclusion. The target population usually has different characteristics, it is also known as the theoretical population.¹⁷⁸ Gay describes the term as setting boundaries with regard to the elements or participants. The target population for this study was the traditional chiefs, professional historians, palace officials and the knowledgeable people on the study. This comprised Oyo in western Nigeria and Zulu People of KwaZulu-Natal Province of South Africa.

3.4.3 Accessible population

The accessible population is the fraction of the entire research population which the researcher can access due to reasons of convenience or availability and the population to

¹⁷⁷ .Cohen, L., Manion, L., and Morrison, K. (2007). *Research Methods in Education* 6th ed. London: Rutledge, 2007, P.96.

¹⁷⁸ . Gay, L. R. *Educational Research: Competencies for Analysis and Application* Macmillan: New York, 2014, P.193.

which the conclusions for generalisation are applied. Silverman views population as a subsection of the target population. However, it is from the acknowledged accessible population that the researcher draws the samples for the study.¹⁷⁹ Based on the foregoing, the accessible population for this study were traditional chiefs, palace officials, professional historians, and the knowledgeable people on the study_ eighty respondents from Oyo, in western Nigeria and eighty respondents in KwaZulu-Natal Province of South Africa. This made up one hundred and eighty respondents, the total number of accessible population.

3.4.4 Sampling procedures and methods

The sampling process is the step involved in taking a relatively small number of a subject from a population as opined by Yunus and Tambi. The selected group of subjects serves as a source of data. In a survey research with a very high population, “it is impractical and uneconomical to involve all the members of the population in a research”. In addition, in using a large population for academic research, the study will be time consuming and involve huge amount of money. The population parameters are estimated on the basis of sample statistics and the accuracy of estimate depends on the match among the sampling design, data characteristics, sample size and sample selection Yunus and Tambi.¹⁸⁰ However, sampling for the study needs to be representative of the whole population from which it is drawn. There is need for representative sample to have the same characteristics as the population used for the study. Based on this, the study would discuss sampling techniques, sample frame and sample size.

¹⁷⁹ .Silverman, D. *Qualitative Research: Theory, Methods and Practice* (2ndedn). London Sege Publication, 2004, P.228.

¹⁸⁰ .Yunus, O., O., and Tambi, A., M., (2013). *Essential of Research Method*. Lumar: UiTM Kuala: 2013, P.238.

3.4.5 Sampling techniques

A sample is a process of selecting participants for a piece of research. It is the means by which the researcher obtains a sample or a portion of the survey population Finn, Elliot and Walton. This implies that, a sample is a sub-set of the population selected for inclusion in the research. This means that sample is smaller than the population from which it is drawn.¹⁸¹ The main objective of the sampling is to obtain a representative selection of the sampling units with the population (Finn et al. Furthermore, a research sample needs to be a representative of relevant characteristics of population. It must be in the same proportions as they are reflected in that population, in order to be free from bias. There are many advantages of using sampling in research. One of the advantages is that, it brings about reduction in cost because it saves researcher's time and money. It also allows for accuracy and effective interaction with the subject.

There are several alternative ways of sampling in research. Neuman says the alternative sampling techniques may be grouped into probability and non- probability. In probability¹⁸² sampling, every element in the population has an equal chance of being included in the sample asserts by Gray, and Airasian. In other words, a probability sample is a technique which adopted a random sample, which by implication is likely to be free of potential bias and allows for the precision of the results. There are various types of probability sampling which include simple random sampling, systematic sampling, stratified sampling, cluster sampling, and multi-stage sampling.¹⁸³ On the other hand, non-probability sampling examples include: Conveniences sampling, quotas sampling, purposive sampling, snowball sampling, homogeneous sample, heterogeneous, quota sample and structured sample. However, non-probability is the procedure in which the sample was selected based

¹⁸¹ . Finn, M.Elliot-White, M. & Walton, M. Tourism and Leisure Research Methods: Data Collection Analysis and interpretation, Harlow: Longman, 2000. P. 242.

¹⁸² .Neuman, W. L. Social Research Methods: Qualitative and Qualitative Approaches.(8th). Harlow: Pearson Education Limited, 2014, P258.

¹⁸³ .Gray, L.P & Airasian, P. Educational Research: Competencies for Analysis and Application, Prentice Hall:NewJessey, 1996, P.176.

on the subjective judgement of the researcher; it does not involve random selection. Both probability and non-probability sampling were used in the study.

3.4.6. Purposive sampling

Purposive sampling, which is also known as judgemental or selective sampling, is a form of non-probability sampling technique. Carr and Steven opine that purposive sampling allows researcher to select sampling based on his personal judgements.¹⁸⁴ There are different types of purposive sampling which include; maximum variation, homogeneous, typical case, extreme, critical case, total population and expert sampling, Patton views many advantages of purposive sampling in academic research and each have a different goal, and they can provide research with the reason to make generalisation from the research that has been conducted. Based on this, the study would use purposive sampling to select the chiefs, Palace officials, Professional historians and the knowledgeable people on the topic. In addition, purposive sampling allows the researcher to select the sample based on knowledge of the phenomena being studied. Having looked at purposive sampling, the research would use the sampling to the respondents for the study.¹⁸⁵

The justification for using purposive sampling to select the traditional chiefs was anchored on the submission of Neuman says that using purposive sampling in a research allows the researcher to have easy access to the target audiences and have quick access to information.¹⁸⁶ He also supports the use of purposive sampling to select chiefs in the province that provide accessible information to a researcher and chiefs and knowledgeable people in Oyo-Yoruba western part of Nigeria, were purposively selected for the study.

The state of justice dispensation in traditional administrative structures was examined in order to show the similarity and dissimilarities in the judicial structures. In addition,

¹⁸⁴ .Carr, W. & Steven, K. *Becoming Critical: Education, Knowledge and Action Research*. Lewes: Falmer Press, 1986, P.222.

¹⁸⁵ . Patton, M., Q. *Qualitative Research and Evaluation Methods*. London: Sage Publication. 2002, P. 182.

¹⁸⁶ .Neuman, W. L. *Social Research Methods: Qualitative and Quantitative approaches*. (8th) Pearson Education Limited: Harlow, 2014, P. 237.

purposive sampling was used in the selection of respondents. In order to have adequate information that were relevant to the study from the respondents, four categories of people would be interviewed. The chiefs, palace officials, professional historians and knowledgeable people on the topic.

3.4.7 Simple Random Sampling

Simple random samples are drawn using the basic probability sampling technique in which participants are drawn in a random way from sampling frame. Simple random sampling is the method of survey research that gives each person in the sampling frame an equal chance of being included in the study Yegidis and Robert.¹⁸⁷ This implies that participants are drawn in a random way from the sampling frame. The research employed a simple random sampling technique to select the respondents in the two empires for questionnaire administration. This researcher administered the structured questionnaire to respondents. The essence of this is to give every participant in the two empires adequate chances to be included in the sample.

According to Walter simple random sampling, in clinical informatics research, is important because it reduces the potential of human bias in the selection of respondents that need to be included in the sample. In other word, simple random sampling provides an opportunity for the equal representation of the population under investigation. The basic advantage of the method is that it allows for the generalisation to have external validity.¹⁸⁸ Random can be used in social science research: These include the use of a table of random sampling numbers, placing the numbers or names in a bowl, known as the “fishbowl technique” and using a computer-generated selection of random numbers.

¹⁸⁷ . Yegidis, B. & Robert, W. Research Methods for Social Workers. New York: Longman, 1991, P.220.

¹⁸⁸ . Walter, M. Social Research Methods. Melbourne, Oxford University Press, 2012, P.248.

3.4.8 Sampling frame

A sample frame is a comprehensive list of the sampling elements in the target population. Sample frame provides a guide for researcher on how to draw the sample from the population.¹⁸⁹ The sampling frames for the study were all the knowledgeable people traditional justice dispensation among Oyo in western Nigeria and Zulu people of South Africa. The researcher sought and obtained permission form Chieftaincy Department of each Local Municipalities in Nigeria and South Africa. In sum, the population and sample size used for this research were based on the approval of chieftaincy Departments of Local Municipalities to obtained lists of traditional chiefs.

3.4.9 Sample Size

Bless and Higson-Smith explain that sample size is a subset of the whole target population that is actually investigated from which characteristics are generalised to the entire population. Scholars have agreed that a sample needs to be representative in a research and at the same time it must be a good proportion of the population.¹⁹⁰ A sample size is the actual number of member of the population that are in the sample. Sample size, in academic research, contributes meaningfully to determine the accuracy of the research findings and results. It is can be stated that the larger the sample, the better it is. A large sample is often an advantage in quantitative research. Bryman states that as the population increases in size, the sample size required for precision in estimation remain constant. This indicates that when the sample size increases the sampling errors decrease. This implies that sample size assists in determine the accuracy of the research results. Bryman identifies various ways in which sample size can be determined.¹⁹¹ These include the application of

¹⁸⁹ . Punch, K., F. Introduction to Social Research: Quantitative and Qualitative Approaches (2nd edn). London: Thousand Oaks, CA Sage, 2009 Pp. 258-260.

¹⁹⁰ . Bless, C.& Higson-Smith, C. Fundamentals of Social Research Methods: an African Perspective. Juta: Cape Town, 2010. P. 228.

¹⁹¹ .Bryman, A. . Social Research Methods (2nd ed,) London: Oxford University Press, 2008, P. 179

sample size of similar studies, using published sample size tables and application of sample formulas to calculate a sample size.

Struwig and Stead observe that adequate sample size in research is very vital because it will ensure reliable information. The danger of conducting research without adequate sample size will make the research effort futile and at the same time unethical.¹⁹² Earlier employs the use of sample size in similar studies and states that not only the size of the population should be considered when determining the sample size, but that variances of the population also need to be put it consideration.

Such variances include; heterogeneity/homogeneity of the population. For a homogeneous population, a large population is not required but a small sample is aright compared with heterogeneous population that requires a larger sample. Welman, Kruger and Mitchel (2005) recommended the need to draw large sample, considering the fact that many of the respondents may decide to be unavailable to honour the questionnaire or to grant the conduct of interview due to various reasons.¹⁹³ They clearly stated, “it is usually advisable to draw a larger sample than the one for which complete data is desired in the end”. Bryman argues that “there is no clear-cut answer to the sample size, since it depends on the purpose of the study”. In addition, the importance of adequate sample size in historical research is very important for planning and interpreting the field work experience.

This is in line with the submission of Frankfort-Nachmias and Nachmias (1996: 192) that, a researcher should “determine the strata; from each stratum, select a random sample with Probability Proportionate (PPS) to the Size of the stratum in the population”. In addition, Babbie (2009) argues that whenever clusters sampled in academic research are of differing sizes, it is advisable to use Probability Proportionate to Size (PPS) in order to give each cluster a chance of selection proportionate to its size. This implies that proportional

¹⁹² .Struwig. F. & Stead. G. Planning, Designing and Reporting Research. Cape Town: Pearson Educationa, 2001, P. 225.

¹⁹³Welman, J. C, Kruger S.J, & Mitchell, B. Research Methodology. Capr Town: Oxford University Press, 2005, P.208.

allocation method was used. The sample size was calculated proportional to the population size. Based on this, medical departments were used as a stratum for determining the size of the study.

3.5 Data collection methods

Data collection instruments devices are tools which are used for data collection while conducting research. Examples of these instruments are: questionnaires, tests, checklists, rating scales and observation. At time, a researcher may use or modify an existing research instruments or develop a new instrument.

3.5.1 Questionnaire

There are many ways in which data can be collected in social science research. These include the use of questionnaires, interview schedules, focus group discussions, observation and standardised tests asopined by Maree.¹⁹⁴In this study, data would be collected through the use questionnaire. A questionnaire is a research instrument designed primarily to gather information while conducting research. It usually consists of a series of questions and other prompts that will give researcher necessary information. The questionnaire is a standard tool commonly employed in social science research and it justifies the need for using questionnaires in traditional justice dispensation. They affirm that questionnaire is very cheap, fast and efficient in gathering large amounts of information from a large sample of people. Maree and Pietersen also observe that questionnaire can be mailed to respondent either through the internet or postal system.¹⁹⁵ They go further to say that questionnaire can be completed at respondents' convenient time and that it is relatively cheap.Questionnaires could be structured or unstructured and

¹⁹⁴ . Maree, K. First Steps in Research. Pretoria: Van Schaik Publishers, 2011. P119.

¹⁹⁵ .Maree J. G. &Pietersen, J. The Quantitative Research Process. In JG Maree (ed). First steps in research. Pretoria: Van Schaik publisher, 2014, P.159.

should be sequenced. Kothari, Maree and Pietersen suggest that questions in questionnaire must be simple, contain a neat sequence of questions and clean, in order to convey intended meaning.¹⁹⁶

3.5.2 Questionnaire construction

The manner and way in which questions are formulated and framed is very important for constructing a very useful questionnaire that will achieve the objectives of the study. It will be very difficult to achieve a reasonable research objective if the questionnaire was not properly constructed. Based on this, Sekaran (2003) states that three areas need to be examined in constructing a research oriented questionnaire.¹⁹⁷ He recommends that the wording of the questionnaire should be of the same level to that of respondents, that is, the respondents should be able to understand the language of the questionnaire; the language should not be ambiguous. Secondly, there should be adequate planning particularly concerning the manner in which the variables will be measured and how they will be scaled and coded after the respondents must have filled the questionnaire. The third stage is about the outlook of the questionnaire. He goes further to say that questionnaire should be very neat and attractive with needed instructions on way it needs to be filled. He further states that, personal information such as monthly income, and open-ended questionnaire should be asked toward the end of the questionnaire, in order to avoid bias.

Best and Kahn have given the insight on ways to develop an effective questionnaire which include; the need for questionnaire to be brief, precise and very easy to fill; the need for the questionnaire to be neat and attractive, and that the questions should be straight forward. There should be a section for demographic variable for respondent identifications. Best and Kahn, pointed out that a good questionnaire must deal with a relevant topic, it can be used to solicit for information that cannot be gotten elsewhere,

¹⁹⁶.Kothari, C.R. Research Methodology: methods and Techniques. New Delhi: Age International Publisher, 2004, P. 120

¹⁹⁷. Sekaran, U. Research Msethods for Business. Hoboken:NJ, John Wiley & Sons, 2003, P. 136.

questionnaire should be attractive, neat and well- arranged. It should be very brief instructions.¹⁹⁸ It needs to define operational terms and should be written in simple and correct English. However, in developing the questionnaire for the study all the aforementioned tips and suggestions by various authors were put into considerations. Clear and brief instructions were given for the respondents on way to fill the questionnaires and the questionnaire was written in simple and straight forward English as recommended by Best and Kahn. Five-point Likert scale was used for the items and respondents were asked to place themselves on the continuum from Yes =5, No=4, Not so sure=3, Not at all=2.

The justification for using five-point scale for the study was based on the submission of Losby and Wetmore.¹⁹⁹ That Likert scale is commonly used in research because it is often used to measure the respondents attitudes by asking the extent to which they agree or disagree, or picking yes or no with particular questions, as related to justice dispensation in traditional administrative structures. In another development, the study uses Likert scale because it has been used in various and similar studies. Another reason for using Likert scale in the study is that it allows for adequate comparison of the results and it has been a proven scale for the studies in Social Science research.

3.5.3 Interview

The interview is a method of data collection in which an interviewer obtains responses from a participant in a face-to-face encounter, through telephone call or by electronic means Nieuwenhuis argues that interview in academic research is a two-way conversation in which the interviewer will ask the participants questions in order to collect data and to learn about ideas, beliefs, views, opinions and behaviours of the participants.²⁰⁰ The aim of interview in academic research is to obtain rich descriptive information that will assist the

¹⁹⁸ . Best, J.W. & Kahn, J. V. Research in Education New Delhi: Prentice-Hall of Private Limited: India, 1999, P. 241.

¹⁹⁹ .Losby .J. & Wetmore, A. CDC Coffee Break: Using Likert Scales in Evaluation survey work. Centers for Disease Control and Prevention, 2012. Retrived from https://www.cdc.gov/dhdsdp/pubs/docs/CB_February_14_2012.pdf Accessed on 14 May, 2017.

²⁰⁰ .Nieuwenhuis, J. Qualitative Research Designs and Data Gathering Techniques. In: K Maree (ed.): First Steps in Research. Pretoria: Van Schaik, 2014, P.87.

researcher to understand the participant's construction of knowledge and social reality. Nieuwenhuis and Brink et al list various forms of interview to include face-to-face, webcam, telephone, email, and instant message and chart interviews. Mugenda and Mugenda assert that interview schedule can be in various forms which are structured, semi-structured and unstructured questions.²⁰¹

The study used structured interview which was purposively done with traditional chiefs of both empires. The traditional chiefs were the heads of the judicial administration; they were responsible for fair administration of justice. The need for the interview was to obtain qualitative data on accessibility for the customary judicial systems in Oyo western part of Nigeria and in KwaZulu-Natal Province in South Africa. Struwig and Stead point out that in structured interview, the questions are formally structured, and wording is not altered from one participant to the other. They were consistent, this interview method is the most appropriate when a researcher needs a straightforward, factual information about a phenomena such as traditional judicial administration in pre-colonial and post- colonial period.²⁰²

The research searched through existing literature and published articles on justice dispensation in customary courts to develop the interview questions. The instrument used to collect the data was interview schedule. The interview schedule was presented to each respondent in exactly the same way. The interview schedule was restricted to the provided questions in the order in which they appear on the schedule. The researcher met the respondents face-to-face for the interview session. This was based on Mgenda and Mgenda's opinion that face-to-face interview is flexible, ensures a very high rate of control of interview situation, enables the recording of conversation and the elicitation of unintended responses as well as the provision of in-depth data that will be useful to

²⁰¹ .Mugenda, O.L. and Mugenda, A.G., (1999). Research Methods: Quantitative and Qualitative Approaches. Nairobi: African Centre for Technology Studies, 1999, P.86.

²⁰² .Struwig. F. & Stead. G. Planning, Designing and Reporting Research. Pearson Educational: Cape Town, 2001, P.199.

achieve the specific objectives of the research.²⁰³ It can be said that interviews is very useful in getting very valuable information as well as supplementary, insightful observation regarding the opinions of the respondents about the subject of the research. Opdenaker claims that, face-to-face interview encourages very rich data, due to a high level of personal interest and response to the research from the interviewees. This implied that, interview technique enables the researcher to collect first-hand information about the interviewee's knowledge, value, beliefs and preference²⁰⁴.

3.5.4 Triangulation

The study also employed the use of triangulation in the validation of data through cross verification from various sources. Triangulation is the use of multiple sources or referents to draw conclusions of what constitutes the truth about a single phenomenon and to bring clarity to and understanding of that Polit and Beck. This implies that triangulation is the use of multiple methods to collect and interpret data about some phenomenon in order to have accurate representation of reality in academic research. In addition, using triangulation in academic research will remove the weakness of biases and challenges that may come from single-method. Various reasons for using triangulation in academic research²⁰⁵ include: the need for additional sources of information to complement in order to give more information about a research, multiple sources of data gathering which allows for verification of similar data. It allows for more comprehensive data and prevents inconsistencies in data sets which are more easily detected. Triangulation provides opportunity for researcher to validate their research results. They go further to say that

²⁰³ .Mugenda, O.L. and Mugenda, A.G., (1999). Research Methods: Quantitative and Qualitative Approaches. Nairobi: African Centre for Technology Studies, 1999, P.84.

²⁰⁴ .Opdenakker, R. Advantages and Disadvantages of four Interview Techniques in Qualitative Research. *Forum Qualitative Social Research*, 2006, 7(4), 1120, Retrieved from <http://www.qualitative-research.net/index.php/fqs/article/viewArticle/175/391> Accessed on 6 July, 2016

²⁰⁵ Polit, D.F. & Beck, C. T. Nursing research: generating and assessing evidence for nursing practice. Lippincott; Philadelphia, 2008. P. 196.

research triangulation allows the researchers to be more confidence about their research results.

Based on this, the study used triangulation methods. De Vos describes four types of triangulation which include: research triangulation, data triangulation, theory triangulations, methodology triangulation, and analysis triangulation. For the purpose of this research, the researcher used data triangulation. The research used both questionnaire and interview in order to ensure accurate validation of the result.²⁰⁶ Methodological triangulation is the use of multiple methods to study a single topic. The study used both qualitative and quantitative methods in the research for cross fertilization of accurate information. Lastly, analysis triangulation which is the use of two or more analytical techniques to analyze one set of data will make the findings of the research robust and detailed according to De Vos. Based on this submission, the study employed the use of triangulation.

3.5.5 Pilot study

Gay discusses on pilot study in traditional judicial research as a feasibility study which may be a trial version in preparation for the real study. This implies that pilot study is pre-testing a research instrument. There were various reasons for using, developing and testing the adequacy of the research instruments, and using it to evaluate the likely outcome of the proposed research methods.²⁰⁷ Therefore, in this study, the pilot study was carried out so as to test, verify and refine the research instruments in order to identify any problems that the respondents might face in understanding the questions and to reduce inaccuracies and inconsistencies in the questionnaire and interview schedules. This is to justify the assertion of which states that, a pilot study assists to improve the reliability of the instrument. As a result, the pilot study would be done to ascertain any weakness that the questionnaire

²⁰⁶ . De Vos, A.S. Research at Grass Root. Pretoria: 3rd VanSchaik, 2005, P.362.

²⁰⁷ .Gay, L. R. Educational Research: Competencies for Analysis and Application. New York: Macmillan, 2014, P. 202

might have. Based on these observations, the information obtained would be used to modify and improve on the questionnaires before they are administered to the chiefs and the selected respondents to be interviewed. According to Gay, pre-test of a questionnaire would bring about questionnaire clarity, comprehensiveness and acceptability, before the main study.

Thus, based on convenience sampling, traditional chiefs in, South Africa, were used for the pilot study. Chiefs, palace officials, customary courts officials and knowledgeable people were given copies of the questionnaires to fill in and they were allowed to comment on the clarity and suitability of the instrument.

3.5.6 Validity of instruments

Kinberlin and Winterstein describe validity as the degree to which a research measures what it intends to measure. They identify the three types of validity to include content validity, criterion-related validity and construct validity. In their views, it is necessary for a research questionnaire to undergo validation procedure in order to measure what it is designed to measure.²⁰⁸ There are various ways in which a research questionnaire can be validated to include face validity and through the conduct of pilot study. Based on these assertions, the questionnaire for the study will be examined by supervisors, colleagues and research experts to ascertain its construct and content validity. Frankford-had early observed that professional's view point on the research instrument is very important in measuring validity in humanities and social science research. However, the justification for validating the questionnaire is based on the submission of Kirck& Marc that, validating research questionnaire in traditional judicial related research is to prevent biased and unrealistic research results. This implies that validity assists a researcher to draw a very

²⁰⁸ .Kimberlin, C.L. &Winterstein, A.G. Validity and Reliability of Measurement used in Research. *American Journal Health Systemic Pharm*, 2008, 1(23), Pp.1-12 Retrieved from <https://www.ncbi.nlm.nih.gov/pubmed/19020196> Accessed on 13 December, 2016.

sound conclusion from his research data. In addition, the questions in the questionnaire were adapted from early pre-tested tools; with this, it enhanced the validity of the instruments.²⁰⁹ The questions in the questionnaire were also adapted from pre-tested tools in similar studies, which enhanced the validity of the instrument.

3.5.7 Descriptive statistical analysis

To determine the statistical analysis of this study, descriptive statistics are used to present qualitative descriptions in a manageable form. Descriptive statistics helps to simplify large amounts of data in a sensible way. Each descriptive statistics reduces lots of data into a simpler summary that may enable comparisons across people or other units. These statistics convert and condense a collection of data into an organised visual representation or picture, in a variety of way in order for the data to be meaningful. The descriptive statistics, in this study, included frequency distributions with minimum and maximum value, percentages. Bertran and Christiansen note that descriptive statistics transform a set of data into either a visual overview such as a table, graph, or into a few numbers that summarize the data.²¹⁰ The study used descriptive statistics because it is the most fundamental way to summarize data and it is very useful in interpreting the results of quantitative or large scale-scale research in the views of Bertan and Christiansen.

3.5.8 Ethical Considerations

The research was conducted in an ethical manner. The ethical manner starts from the conceptualization, planning phases, to the final stages. The researcher has the right to always search for truth in the most rigorous way, but never at the expense of the rights of the individual and communities. Babbie and Mouton maintain that in order to conduct

²⁰⁹ . Kirk, J. & March, L.M. Reliability and Validity in Qualitative Research. Newbury: Park, Sage Publication, 2006, P.188.

²¹⁰ .Bertram, C. & Christiansen, I. Understanding research: an Introduction to Reading Research. Van Schaik Publisher: Cape Town, 2015, P.168.

research ethically, the research must put the following into consideration: conduct the research competently, with sound and well-articulate methodology; adequate management of the resources; acknowledge those that contributed to the success of the research; effective and ethical communication of the result; and consider the consequences of the research for the field of study in particular and the society in general.²¹¹

Based on this, the research was conducted in line with various ethical issues; firstly ethical clearance was collected from University of Zululand ethical committee (See appendix C). In addition, ethical approval letters were collected from the four municipalities in Kwa Zulu-Natal (KZN) (see appendix D). At Oyo, Nigeria, ethical letter was collected from the four local municipalities on chieftaincy matters (See appendix E). This indicated that the data for the study were collected in line with the approved data collection protocol.

Furthermore, the participants in this research were informed about the nature and purpose of the study and their confidentiality was granted and protected concerning the information they gave to us. They were also told that their participation in the study was voluntary. Permission was sought from the traditional Chiefs, Palace officials, Professional historians, and knowledgeable people on the topic before the research instruments were given. All works used in the study were duly acknowledged as expected in every academic research.

3.5.9 Conclusion

Triangulation, which is the use of multiple sources that are both quantitative and qualitative, was used to collect and analyze data. The qualitative approach was used to analyze the research subject, in terms of trends and frequencies, also qualitative approach was used to determine the meaning of the phenomenon, through adequate description. The

²¹¹ .Babbie, E., & Mouton, J. The Practice of Social Research, Cape Town: Oxford University, 2010. P 318.

qualitative approach therefore captured non-quantifiable aspects of the study, such as issues of policy. The review of methodology indicated that the use of both quantitative and qualitative approaches has a significant impact on justice dispensation in traditional administrative structures research development, particularly in obtaining better results. Descriptive statistical methods were used to analyze the data.

CHAPTER FOUR

PRINCIPLES OF OYO AND ZULU ADMINISTRATIVE STRUCTURES AND OPERATIONS

4.1 Introduction

Administration would remain no more than a high-sounding ideal with hardly any practical relevance unless there is the existence of certain techniques which transform ideals into practical reality. The administrative structures and operations in Oyo and Zulu empires have over the past developed certain rules, techniques and procedures for the proper administration of justice and for the better protection of rights of individuals.²¹² These are commonly referred to as the minimum standards of administration of justice. Coupled with other constitutional guarantees which reflect in the custom and tradition of the people of the two giant empires, these minimize the risk of injustice. The aim of this chapter is to analyze some of these principles and to use them as a yardstick to test the activities and procedures of the chiefs in their administrative structures and operations which basically reflected in their administration of justice. The analysis will also assist in proposing desirable changes. It must, however, be pointed out that what may be regarded as fundamental or fair and just may largely be influenced by one's philosophy and political theory. Yet an attempt will be made to be as dispassionate as is humanly possible. This is essential because the institution of chieftaincy is not static but should adapt to the ever-changing social and political climate.

The use of these fundamental principles of administrative structures and operations is to showcase the unique system of administration of the two empires (Oyo and Zulu) which revolved around checks and balances and to debunk the assertion or to superimpose

²¹².Theophilopoulos, Constantine. Fundamental principles of civil procedure. Durban : LexisNexis Butterworths, 2006, pp. 32-38.

western ideas on the principle of how each organ is checking the others, method of operation of chiefs, but more to assess to what degree they conform to reasonable standards that facilitate the doing of elementary justice.²¹³ Where the chiefs' courts do not conform to these, however, there may be valid reasons for such deviation. One must not lose sight of the fact that these principles and procedures have been fashioned by certain philosophical, sociological and political considerations within a specific milieu. Although they have universal applicability, certain aspects thereof may be inappropriate in certain societies.

4.2 Historical Background of Oyo and Zulu People

Oranmiyan was the founder of Oyo and the first king in Yorubaland, with the title of Alaafin of Oyo meaning, the “owner of the palace”; he was the youngest grandson of Oduduwa. Oyo was founded in the sixteen century, and occupied what is known today as the Western and North Central Nigeria. The empire grew to become one of the largest empires in West Africa and dominated all Yoruba kingdoms namely: Ife, Ijesha, Egba, Owu, Ijaye, Ila among others. Oranmiyan assumed his position as a warrior and strong military leader.²¹⁴ He was the founder of the order of the Esos, his body-guard consisted of one hundred and fifty (150) well-trained soldiers and his brethren were the kings of “Gogobiri” and “Kukawa” of the Hausaland. When Oranmiyan became resilient enough he determined to avenge the expulsion of their ancestor by the people of “Mecca.” He and his brothers gathered their forces and marched out of Ile Ife, leaving Adimu in charge of the treasure and the sacred charms. The brothers quarreled at Igangan and dispersed. Oranmiyan tried to cross the Niger but Nupe people (or the Tapa as Yoruba people called them) mired him and he turned away up the river until he reached Bussa or “Ibariba.”

2. Theophilopoulos, Constantine. *Fundamental principles of civil procedure*. Durban: LexisNexis, 2012, pp.48-55.

3. Johnson, S.A. *The History of the Yoruba's*, great Britain, Love & Brydone Printers Limited, Thetford, Norfolk, 1921, pp143-148.

Here, he was advised by the Chief of Bussa, having accomplished nothing, not to go back to Ile Ife. The Chief of Bussa hit on the laudable idea of founding a new city and took Oranmiyan people's minds off his failure. Bussa was further very helpful and produced a large snake to which he attached a charm. He advised Oranmiyan to trail the path of the snake until it halted in seventh day. If it then vanished he should found his town there.²¹⁵ Oranmiyan followed the advice faithfully, the snake went to the bank of the Niger in northwards direction where it returned westward to the boundaries of the Baribas, and the Yoruba hosts followed it. At Ajaka the snake stopped in seven days and vanished into the ground. Here Oranmiyan founded his town where he called Oyo Ajaka, this was called Eyeo by the Europeans and Katunga by the Hausas but today it is called Old Oyo. From whence he spread southwards towards the coast, people encompassed in this vast region, viz. the Ifes in the east, the Niger in the north, the Baribas in the west as well as the Dahomians, and the Egbados in the south; these are known as the Oyos or Yoruba proper.

²¹⁵. Law, R.C.C. *Traditional History in Biobaku*, S.O. (ed) *Sources of Yoruba History*, London; Oxford University Press, 1973. pp. 26-30.



Source: [https:// www.google.co.za/](https://www.google.co.za/) search old Oyo Empire map.

4.3 The Origin of the Yoruba

The Yoruba constitute one of the major ethnic groups in Nigeria and they occupy the whole of Ogun State, Ondo State, Ekiti State, Oyo State, Osun State, Lagos State and a large part of Kwara State. A substantial number of Yoruba people also lives in the south eastern part of the republic of Benin (former Dahomean). All these areas refer to what was known as Yoruba nation, before the European partition of Africa. The Yoruba origin emanated from Lamurudu, one of the monarchs of Mecca whose progeny were: Oduduwa the descendants of the Yorubas, other Monarchs were Gogobiri (Gobir, in Hausaland) and Kukuwa (Bornu). The coronet Prince Oduduwa reverted into idolatry during his father's

reigns; he had many followers with great influence.²¹⁶ His mission was to change the people's religion into idolatry, he transformed the famous mosque of the metropolitan into a peganshrine, Asara his ecclesiastic, his image maker, was decorated with idols images. Asara had a son named Braima who grew up in Islamic doctrine. When he was young, he sold his forebear's idols, a career which he thoroughly detested, but was indulged to involve in. With the impact of the Crown Prince, a royal order was issued compelling all men to go for hunting for three days before the annual celebration of the festival held in honour of the gods.

When Braima was old enough he grabbed the opportunity of one of such absences from the town of those who might have opposed him to destroy the gods whose presence had caused the sacred mosque to become desecrated. The axe with which the idols were hewed in pieces was left hanging on the neck of the chief idol, carved images and many woods were burnt. With the enquiry made, it was discovered who the iconoclast was; this development led to a civil war between the two parties. Supporters of Mohammedian who were being suppressed had the upper hand. Lamurudu the monarch was slain, all his progenies and those who identified with them were banished from Mecca. The Princes who became the Monarchs of Gogobiri and of Kukuwa went westwards and Oduduwa eastwards directions.²¹⁷ The latter journeyed for ninety (90) days and lastly stopped and settled down at Ile- Ife where he met some people among whom he met was Agbomiregun the founder of Ifa worshippers.

Oduduwa's sons vowed a strong detestation of the Muslims of their state and promised to revenge, but he latter died at Ile-Ife before waiting for the period he would strong enough to wage war against them. His firstborn Okanbi also died in Ile Ife. He was succeeded by

²¹⁶. Adebajji, A. A History of the Yoruba People, Dakar; Amalton Publishers, 2010, pp. 1-15.

²¹⁷. 3. Johnson, S.A. The History of the Yoruba's, great Britain, Love & Brydone Printers Limited, Thetford, Norfolk, 1921, pp1-15.

renowned five princes and two princesses who subsequently developed into various ethnics of Yoruba nation. His first born (child) was a princess who got married to a priest and became the renowned Olowu, the progenitor of Owus, the second born was also a princess who later became the mother of Alaketu, the descendant of the Ketu people, the third a prince, became the King of Benin people. Fourth, the Orangun, became the King of Ila people, the fifth, the Onisabe, or King of the Sabe people, sixth, Olupopo or the King of the Popos, the last born, which is the seventh, Oranmiyan, was the progenitor of the Yoruba proper, or as they are called, Oyos. All these princes became kings who wore crowns as distinguished from those who were vassals who did not dare to wear crowns but coronets.

Oranmiyan who bears the title of Alaafin and was the youngest of Oduduwa's children finally became the richest and the most prominent among them. The death of their grandfather made his children to divide his property among one another. Benin Monarch inherited his money, Orangun of Ila his wives, the Olupopo the beads, the Olowu his clothes, Alaketu inherited the crowns; Oranmiyan was not around, he went on war tour when the division was made, he was shut out of the movable assets, nothing was left for him except land. He was fulfilled with his portion, with his utmost skill, Oranmiyan turned his portion to fortune; he held his brothers as tenants living on the land which was his for rents, he received money, women, cattle, beads, garments, and crowns, from his brothers' portions as they were relied on land to survive. He was chosen to succeed their grandfather as king in the direct line of succession. His brothers ruled independently as kings in many provinces, Oranmiyan was placed on the throne as Alaafin or lord of the imperial palace at Ile Ife.

Another version says, Oranmiyan was left with a bit of rag on him, and soil, 21 fragments of iron, and a cock. All the outward of the world was then covered with ocean. Oranmiyan laid the soil, his portion on the surface of the ocean, and positioned on it the cock which scattered the soil with its feet; the wide expanse of water became filled up with soil and dry land appeared everywhere. His brother's decided to live on dry land rather than on

the surface of the water and were permitted to do so and pay their annual lease for sharing with their younger brother his own share. Both traditions acknowledge and attribute the land to Oranmiyan, hence the common saying, “Alaafin l’oni ile” (the Alaafin is the lord of the land).

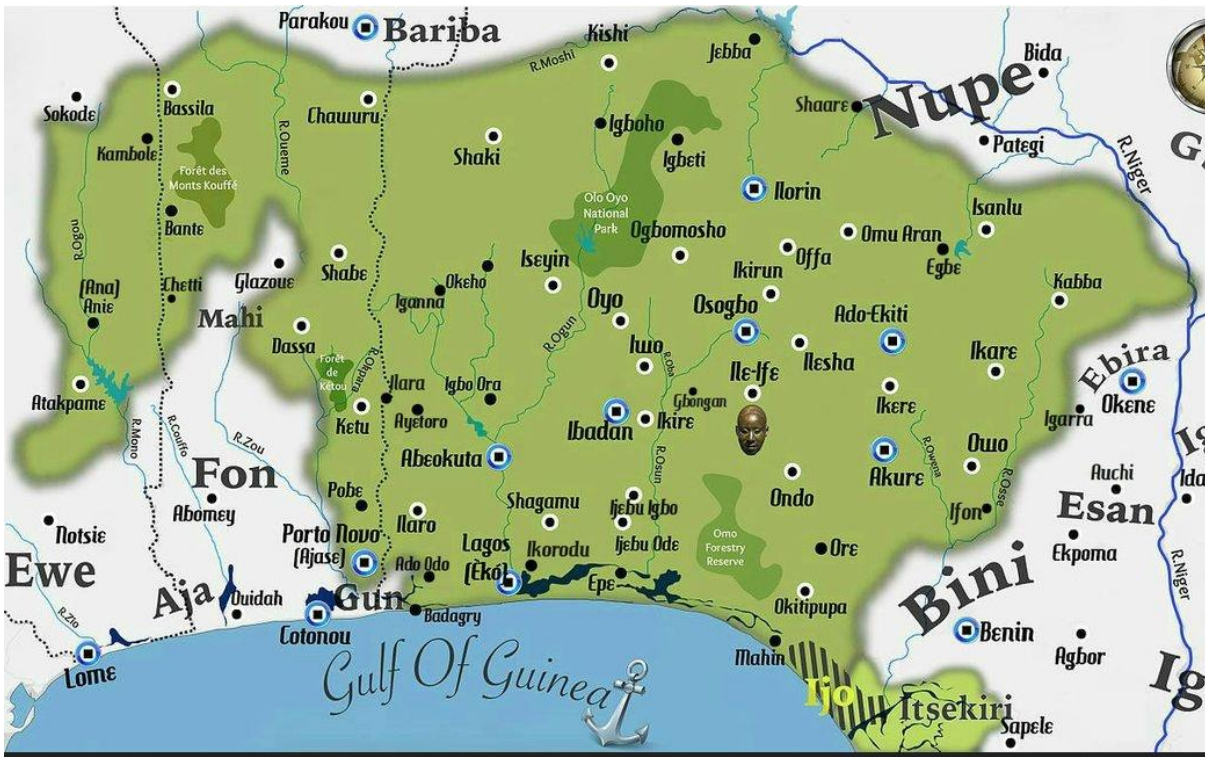
Yoruba oral traditions of origin apparently had contradictory information about the origin of the tribe. On one side, there is a body of tradition which claims that Yoruba had been leaving in their homeland since the time of creation.²¹⁸ According to this tradition, in the beginning when the world was only a mass of water, God sent Oduduwa from heaven to create the earth and the human race. Oduduwa descended with his lieutenants and landed at Ile Ife, where he accomplished his task. Thus, by this tradition, Ile Ife was the cradle not only of the Yoruba but also of all mankind.

4.4 The Origin of the Zulu

The Zulu tribe is among the most prominent known tribes in Africa; originally, the emergence of Zulu was from the Ngunis who occupied the Central and Eastern Africa and consequently migrated to the Southern Africa in the Bantu migration about the middle of the fifteenth century. The Zulu people represent the largest population of ethnic groups in South Africa. It would be futile attempt to make a detailed study of the Zulu people; much of the pre-Shakan history of the Zulu is vague owing to the lack of written records in pre-literate society. Much that had been written later was a matter of conjecture and was frequently written by people who could not have been objective or impartial in assessing the position of the Zulu people.

²¹⁸. Atanda, J.A. An Introduction to Yoruba History. Ibadan: Ibadan University Press, 1980. pp. 5-8.

Map showing the major cities in Yoruba land.



Source: <https://www.google.co.za/> Yorubaland map.

Zulu name encompasses over two hundred ethnics spread throughout the KwaZulu-Natal. King Shaka had incorporated them into one nation in the beginning of the nineteenth century. Previously, the Zulus had been one of the trivial ethnics that fell under the authority of Dingiswayo, the Mthethwa leader. The Zulu people settled primarily in the Mhlathuzi valley under the headship of Malandela. Hisson Zulu, who is considered as the founder of Zulu clan, from where their name emanated.²¹⁹ Zulu settled in the region of Mtonjaneni Mountain. Zulu was succeeded by his son Phunga, and the latter was succeeded by his brother Mageba who took up his brother's widow and gave birth to children for him, among his children was Ndaba.

The next king was Ndaba, who gave birth to Jama had two wives, the first and the chief wife of Mthaniya had twins for him. Their names were Mkabayi and Mmama, and later ga

²¹⁹ .Binns, C.T. The Warrior People: Zulu Origins, Customs and Witchcraft, London: Hale Publishers, 1974, P.55.

ve birth to Senzangakhona, a boy. When Jama died, the seat was vested in the diarchy of Mudli and Mkabayi, grandson and grandfather of Ndaba. It was Senzangakhona's son, Shaka who fused the Zulu authority together.

When Shaka ascended the throne after the death of his father in 1816, there were more than fifty self-governing clans in Zululand. They spoke one language and practised the same customs. All bands descended from a common progenitor.²²⁰ Shaka fixed out a nation indeed, an outstanding act of prowess. Though before these clans had been independent, some were stronger than others; though some had participated in internal battles, virtual peace had been sustained in olden days and there were constant intertribal wars. Today, the term 'abakwazulu' means the members of Zulu clan, but also has a wider meaning of all the people who pay allegiance to the Zulu king. Collectively, whatever their clans name, they were addressed as Zulu. Political and kinship affiliation came to be distinct also in smaller political groups in which Zululand was divided. These were composed of members of many clans, though they might have core kinsmen: members of a single clan might be found in many political groups. While the kinship basis of political group disappeared, the new ones which emerged were described in kinship terms.

King Shaka changed the Zulu army in various ways, he subjugated his enemies and fused his power as a potentate of Zulu. The pre-Shakan tribes were later subdued by the stronger tribe, and they became more or less standardised under Shaka's administration. There was the propensity to adapt with the tradition and language of all those clans, and they became the same cultural group. The new military technique which compulsory all males to belong to squads permitted the eradication of non-Zulu language and tradition. Though, it not clear that King Shaka eliminated everything that had occurred before his reign. In appreciation, the place he was before had been retained. New development of events started in 1824 with the arrival of the European in Kwazulu-Natal, the English merchant's

²²⁰ . Bryant, A.T. Olden Times in Zululand and Natal. Cape Town; Struick, 1965. 38-46.

who visited the kingdom. They, on their way to India discovered a settlement at Port-Natal to engage in commercial activities with the black, their articles of trade were ivory and skins. King Shaka gave them a warm reception and even appointed them chief over the conquered area around Port-Natal. The contact of the English merchant's in Kwazulu-Natal was a prologue to a long period of contact of the Zulus and whites which promote a new social set up. The white's society whose technology and their economic life were different from that of the Zulu society needed to acclimatize with the black environment. King Shaka's contact with the white was very brief, and he was assassinated in 1828.

SHAKA ZULU KASENZANGAKHONA 1787 - 1828



Figure 3: image of King Shaka Zulu.

Adapted from: African Studies Museum, New-York, USA.

Dingane ruled after King Shaka. It was during the rign of King Dingane that a great party of Boer trekkers arrived in Natal in 1838. Their chief desire was land and the procurement

of labourers. The associations between King Dingane and the Boers soon worsened. Fighting ensued, this ended in the defeat of King Dingane by the Boers with the support of his younger brother Mpande. The Boers occupied Natal.²²¹ Already there had been some link between them and the English. Mpande became Zulu king, although, as Gibson puts it, he was "recognised king of the Zulus and not of Zululand". In 1843, Natal was annexed by the British and Advocate Henry Cloete was sent as commissioner to amend land issues and resolve disputes. In 1845, it was annexed to the Cape. The other portion of Natal was occupied by the Boers. Both states were occupied by people with a different culture and mode of production from those of the Zulus, and with different motives. A clash of cultures was bound to occur, the clash was preceded by a clash of arms.

King Mpande died in 1872, his son Cetshwayo succeeded him as Zulu king. Cetshwayo was destined to be the last self-governing Zulu king. His relationship with his British neighbours was not as pleasant as that of his father. He embarked into a violent war with the British at Isandlwana in 1879, in which encounter the British suffered a severe setback.²²² In 1880, the Zulus were ultimately defeated at Ulundi. King Cetshwayo was arrested and exiled, and thousands of cattle were taken from him by the British as coverage. Zululand was divided into thirteen "territories" under independent chiefs. Each chief had to sign a deed with conditions of chieftaincy laid down by the British. This arrangement proved unacceptable. Battles and wrangles, hitherto controlled by national unity, now broke into open war. Serious difficulties resulted from the activities of some chiefs and this necessitated King Cetshwayo's recall.²²³ In the meantime he had been to England to present his case before the Queen, and it was decided that he should be reinstated. This was done under certain circumstances specified by the British.

²²¹. Brookes, Edgar H. A history of Natal. Pietermaritzburg: University of Natal Press, 1979, pp. 62-88.

²²². Chadwick, G.A. & Hobson, E.G. The Zulu war and the Colony of Natal, Qualitas publishers Limited, 1979, pp. 68-73.

²²³. Bryant, A. T. A history of the Zulu and neighbouring tribes. Cape Town: Struik, 1964, pp. 55-72.

This half-hearted restoration of the king led to civil strife between the Usuthu tribe under the king and Mandlakazi tribe under Zibhebhu kaMaphitha, a relative of the king and one of the influential chiefs that had the backing of the British. After a protracted period of skirmish, counter-skirmish, violence and intrigue, King Cetshwayo died in 1884 and left his son Dinuzulu a legacy of trouble. Because of the embargo against the return of battalions, Zulus were thus freed for labour service. Missionaries and traders were granted a protection during the battle.

When Dinuzulu succeeded his father, his councillors turned to the Boer farmers who had infiltrated northern Zululand for the support of the 15-year old heir. The Boers recognised the paramountcy of Dinuzulu, and showed readiness to assist. Zibhebhu appealed to the British, but since the latter were averse to extending their supremacy over Zululand, this was unsuccessful. In the clash that ensued Zibhebhu was defeated. As compensation, the Boers proclaimed a "New Republic" over an area of north-western Zululand and King Dinuzulu was forced to appeal to the British. The British immediately prevented the Boers from annexing a potential harbour at St Lucia and adjudicated to reduce the Boer land claims. As a result many Zulus became labour-tenants on Boer farms. Finally the British decided to end the disputes by occupying Zululand in 1887.²²⁴ The subsequent fight between King Dinuzulu and Zibhebhu led to the banishment of King Dinuzulu to St Helena. In 1891, he was permitted to return to government "Iduna". Zululand was surrounded by a land commission and open to white settlements.

The British government penetrated fully into socio economic and political development of Zulu life. Their interference had a disintegrative result on the Zulu social and political structure. Zululand was further pinched into a new industrial and agricultural arrangement of Europe as had been the case in Natal. Thousands of blacks that were settled in the territory annexed by the British and Boers presented problems. There was no provision for

²²⁴. Gibson, G.Y. *The Study of the Zulu*. New York: Negro University Press. 1970, pp.55-75.

their cultural needs. They were simply regarded as aliens, "intruders" from Zululand. To untangle these knotty difficulties,²²⁵ Cloete had a function. He, however, unsuccessful to solve the problems and avoided the issue by regarding blacks as migrants from the Zulu country. In order to resolve the problem, it was suggested that they may settle in dispersed locations. Thus began the modern black townships in Natal and KwaZulu.

After the Zulus' failed bid to regain their independence in 1906, King Dinuzulu was exiled to the Transvaal where he died in 1913. His son Solomon was acknowledged as his successor. In 1948, Cyprian Bhekuzulu, son of King Solomon was accepted as paramount chief of the Zulus though he was essentially under the authority of the white government. His influence was confined to the Usuthu area and no longer stretched over the whole of Zululand. The other chiefs had similar control over their respective clans. Even though the present Zulu king is recognised legally as the head of the Usuthu tribe in Nongoma (a) although the government recognises his superior status.

Map showing the major cities in Zululand.



²²⁵. Krige, E. J. The social system of the Zulus. Pietermaritzburg: Shuter & Shooter, 1965, Pp. 63-84.

Source: <https://www.google.co.za/> Zululand map.

4.5 Principle of Separation of Power in Oyo and Zulu Traditional Administration

The principle of separation of power has been in existence from time immemorial, separation of power has been in existence since man came to the society. It is contrary to state that the doctrine of separation of power was strictly observed in Africa, before the advent of the British. This foregoing position can be demonstrated with reference to Oyo and Zulu Empires, where there were in existence The Alaafin, Oyomesi, Eso or Military, Eunuchs, Ogboni, and Ilari; while in Zulu we have The Isilo, Izikhulu, Military, Status and political power. This brought about necessary checks and balances in Oyo Empire, there was no separation of powers in Zulu Empire.²²⁶ Bearing in mind the underlying reason for the doctrine of separation of powers, which is the protection of individual liberty, this was not an issue in Zulu traditional society. In Zulu society, emphasis was not so much on the protection of the rights of the individual as on the protection of the interests of the society as a group. Also to make sure power is not concentrated in the hands of the kings, and to guide against abuse of power.

4.5.1 The Alaafin

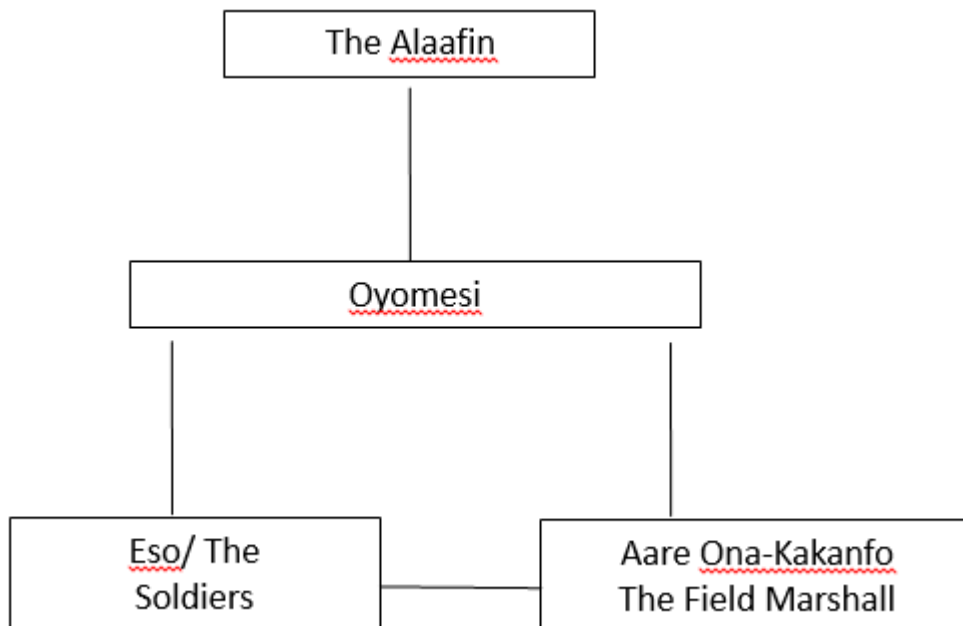
The Alaafin was the head of administrative and executive arms of government, he was the head of Oyo Empire. Entrusted with the implementation of external policy by diplomacy or war, the management of markets and trade, the investigation and punishment of crime,²²⁷ he was also responsible for the peace, order, good government and the supreme

²²⁶. Lloyd, P.C. Political & Social Structure in Biobaku, S.O. (ed) Sources of Yoruba History. Oxford: Clarendon Press, 1973, pp. 212-213.

²²⁷ . Johnson, S.A. The History of the Yoruba's, Great Britain, Love & Brydone Printers Limited, Thetford, Norfolk, 1921, pp. 41-43.

overlord of the people, and keeping the tributary states safe. The celebration of the principal annual rites in the state cults of the Yoruba gods and ancestors, having to implement policy in all aspects, he conducted the affairs of the state with the advice of the Oyomesi and other establishments. They also sought his approval on major issues necessitating his concurrence, including the administration of justice and politics which is a centralized system.

The figure below showing the administrative and defense system of the Alaafin



Source Kolawole Balogun: government in Oyo Empire

4.5.2 The Oyomesi

The Oyomesi, on the order of Alaafin, raised the citizen army of Oyo, and the Bashorun commanded it. The cults were in the hands of free Oyo, and their titled priest rank among

the subordinate officials of members of the Oyomesi, who were themselves civil lords of the non-royal wards, and who severely had some judicial power in them, adjudicating disputes between the component lineages, and generally in matters where arbitration rather than punishment was the aim. Finally, the Oyomesi could dissuade Alaafin from embarking upon rash adventures, because they held his life in their hands. Collectively, with the Bashorun as the spokesman, they could pronounce his rejection, whereupon he would have to commit suicide. No Alaafin has committed suicide since the death of Alaafin Maku, but tradition of earlier suicides can be interpreted as indicating that, whatever the former pretext, the main reason of rejecting an Alaafin was his insisting on an unpopular war, being defeated in battle after taking the field in person, or failure to prevent excesses of his Aremo (Eldest Son) or his high ranking slaves, and especially for failure in the execution of policy agreed with the Oyo- mesi. After the death of an Alaafin, they decided upon his successor.

While the Oyomesi held the ultimate power of life and death over the king, he had no such power over them, for he could not dismiss them collectively from the office. There were circumstances in which he could dismiss an individual member, who would then be expected to commit suicide to remove the disgrace from his own lineage. He had a right to alter the succession to the office of Bashorun: that is to say who could vest the office in another lineage; and the right, according to Johnson, had been exercised four times. It is uncertain whether Atiba was also following precedent in altering succession into other offices in the Oyomesi, though it is likely that there were precedents for a change he made in the council's composition. Successors to membership of the Oyomesi were elected by their respected lineages and, if the election was shown by the Ifa oracle to portend a good omen and confirmed by the The Oyomesi, they met together twice daily and, after private discussions, went to the palace to pay homage to the Alaafin and offer counsel. Its members had, besides their mutual relationship to the king, individual relations with him. There were seven Oyomesi, each with a title, and they constituted a rank order which, in

Atiba's era, was as follows: The Bashorun, Agbaakin, Shamu, Alapinni, Laguna, Akiniku, and Ashipa. The Bashorun's role was the most important. He was not only the commander of the army of the citizen of Oyo, he was also the principal king maker and diviner of the king's spiritual condition.²²⁸

The Bashorun in old Oyo had been the richest man in the Empire, and Oluyole in Ibadan was the most powerful. His title was a contraction to Iba-ashe-Orun, 'the lord who performs the Orun', which is related to his role of going once a year to the palace and presiding over the secret Orun rite to divine whether the king was on good terms with his own Orun, his spirit double(alternate spirit), who was with God in heavens. The divination must be made to show that the relationship between the king and his 'spirit double' presaged misfortune, in which case further divination might reveal that the offering of sacrifice was needed to restore a favorable relationship; it could show that the king's spiritual condition was so bad that he should no longer reign.

The oracle operates through the casting or 'letting fall' of the pieces of a split kola-nut and it could only be interpreted to give a 'yes/no' answer or favorable /unfavorable response; in the process, the oracle could readily supply the Bashorun with a pretext for urging upon the Oyomesi the rejection of the king. The precedent that in the absence of the Bashorun, the eunuch holding the state title of Otun Efa should officiate in his place was followed while Oluyole in Ibadan was Bashorun during the first part of Atiba's reign; not until Atiba's friend, Gbenla succeeded to the title after Oluyole's death in 1847 was the Orun performed in New Oyo by the Bashorun.

(ii) Agbaakin was the next in hierarchy to Bashorun, custodian of the temple of Oran-an-yan, the legendary founder of Alaafin's dynasty. Oramiyan had to invoke with a human

²²⁸ . Peter, M.W. The Yoruba Kingdom of Oyo in Deryll, F. & Kaberry, P.M. (eds). West African Kingdoms in the Nineteenth Century. London: Oxford University Press, 1967, pp. 53-65.

sacrifice as a pre-condition for success in war; hence through the Agbaakin's role, Oyomesi had control over the sending out of a military expedition.

(iii) The Shamu was saddled with the responsibility of counselling and guidance on serious issues or cases. He was second in importance to the Ogboni. His function was to restrain other members of Oyomesi from calling for the death of the Alaafin. His title meant 'Shak'o-mu!' i.e. 'pick your choice!', and he had the privilege of first choice of gifts or booty the king distributed to the Oyomesi anytime. His friendship also caused him to follow suit when the King died. If the Oyomesi decided that the Alaafin should be told to go 'to sleep' the Shamu would abide by the decision, go with them to the Alaafin, and then afterwards, say in the presence of Shamu, announce that the time has come to demonstrate his own act of love (Olofi) and he would take poison. His suicide is to be regarded as an exercise of love by a freeman, unlike the compulsory suicide required of certain officials.

(iv) The Alapinni was the head of the masquerades, a mystical institution, and in the olden days his office eliminated witches by execution and sorcery and brought the gods and ancestors embodied in masks visibly into the world at its festivals. At the beginning of their annual festival they could arrange for the disappearance of the reputed witches, sorcerers, and people who had shown themselves contemptuous of persons of high ranks. The Alapinni was the custodian of the mask, juju, ostensibly the property of the Alaafin, which was worn by the slave of Aremo (Eldest son of Alaafin) who publicly executed and convicted witches and sorcerers. He was also patron of the Okere (ruler) of the town of Saki, the center of the cult and was the only free Oyo, apart from the Bashorun, to be appointed patron of a subject ruler.

(v) The Laguna was described by Johnson as 'the state ambassador in critical times'. His traditional role seems to have been primarily a religious one, as head of the cult of Orisa Oko, god of the fertility of the farm-land and of the increase of game in the bush. He had charge of the first-fruits rite at the yam harvest, and until he had invoked Orisa Oko and

sent a dish prepared with new yams to the Alaafin, no one was permitted to taste new yams at functions.

(vi) The Akinniku's public role was to praise the Alaafin when he appeared in the palace for court at the principal annual festivals.

(vii) The Ashipa was the last in order of ranks of Oyomesi, from Oja's descendant, head of the largest ward in Oyo and lord of extensive territories outside it which had belong to villages which Oja had compelled to move into his settlement. He had charge of the cult of Ogun, the Yoruba god of iron and of hunters and warriors. As such he was titular head of the guild of huntsmen, and hence of the vanguard in offensive war, which was recruited from it.

4.5.3 The Ogboni

The Ogboni cult of the Earth is mainly prominent in arbitrating the relationship between Alaafin and Oyomesi, since it could levy ritual sanction on both. The complete initiated members of this powerful and dreaded association enlisted partly by inherited right, partly by request by Ogboni priests from free citizens of Oyo based on age, maturity, assumed wisdom, and some reputation in secular and religious life.²²⁹ As far as the public is concerned, the known duty of this cult was to punish the shedding of human blood; however, causing wounds was a sin as well as a crime, which resulted into an investigation by the judicial officers of the cult, the Apena, who extracted serious levy in compensation from all parties to the tussle, as well as referring the major offenders to the Alaafin for punishment. The cult's function was to perform spirited significant rites for the king, and the society at the privacy of its lodge in the palace forecourt, rites that gave members such magical powers that barred any intruder from their activities which ensured utmost secrecy of their discussions on government programmes.

²²⁹ . Ogunmola, M.O. A New Perspective to Oyo Empire History. Oyo: Samuel, A, Press, 1997, pp. 76-80.

All members of Oyomesi were automatically ex-officio admitted to the higher cadre of the cult, but were banned from occupying the highest ritual offices, which were assigned to certain families, (though successors must be acceptable to the Ogboni and the Alaafin, and the candidate confirmed by the Ifa oracle). The King was represented by the woman who heard all that was discussed and conveyed it to the Alaafin, but she did not take part in the meeting. They have to accept the decision taken in the meeting, even though the decisions might not have been unanimously concluded. Ogboni leaders were protected from undue pressure from Oyomesi because the holder of the highest title (head of women's unit) rose in the royal division of Oyo, and was not attached to any chief of the Oyomesi.

Ogboni cult was the scene of Alaafin's secret rite for Ile (Earth and her spirit), the celebration always took place during the Orun festival (Sky and Spirits in the sky). The Alaafin and the head of women unit, and the third eunuch (Osi-Efa-Eunuch of the Left), joined the Ogboni head priest (Oluwo-Lord of the mysteries) to consult the oracle whether the Earth would sustain his rule in the coming year, and if sacrifices were required for him to have a good reign, the Earth's verdict would be compared with that obtained by the Bashorun when he divined with the essential rite of Alaafin Orun. If both signified calamity, the Oyomesi had ground for requesting the suicide of Alaafin.

However, it would be unwise to conclude that an Alaafin's reign was certainly likely to be terminated abruptly because of the premonitions of oracles, which in some degree might have been manipulated by their operators.²³⁰ Special care perhaps must have taken in appealing to the oracle before the king would decide on the next line of action; if the opposition increased between the Alaafin and the Oyomesi or the people of the town grew disaffected, then in a given verdict the Oyomesi had to call for the Alaafin to 'sleep', a reconsideration of the view of the oracle would strengthen the resolve of the Oyomesi and give them the concurrences of the Ogboni.

²³⁰. Ajayi, J.F.A. & Michael Crowder, History of West Africa Vol. 1, 3rd edition, U.S.A, Longman Nigeria Ltd, 1985, pp. 268-274.

If the oracle were not of principal importance in determining whether the Ogboni or Oyomesi should decide whether the Alaafin should or should not continue to rule, they were greatly essential with regard to the executive and administrative arms that the King controls; and the principal oracle diviner, the Ona-ilemole, lived in a separate quarter of the town and in constant communication with the Alaafin. The Alaafin needs to seek the opinion of the gods (Orisa) to have oracular approval for the appointments of officials of all cadres, from a new Bashorun to a titled priest or a slave-envoy (Ilari), to be told what must be done to get favourable presage for initiative of every kind; and to have understood any events that were consequently significant (Morton Williams).

4.5.4 The Esos or Military

There were two lines in the rank of Oyomesi; the first one, military (Eso) and the second, civil (Mogaji). Ten military men were to be nominated from each member of the Oyomesi to the Alaafin, who would be responsible for their various postings in the office. Their functions were to recruit more soldiers for war, to train them and to form their auxiliary group of non-military and those that will supply military food items. Some of the Eso were conferred with the rank of Balogun (War Leader/Father), the leader of main contingent of the army. When necessary, the Alaafin would appoint the overall leader of the military (Eso) the Are-ona-kakanfo to be commandant of military operations in some parts of the Empire under external threat of attack or at garrison for a campaign of invasion. The Esos took precedence after Oyomesi, the seventy of them in the Empire were divided into two groups of sixteen and fifty four. The titles of the former group who represented the superior grade are as follows: Gbonka, Esinele, Owota, Sadoe, Eso Oran-an-yan, Kogbona, Saakin, Eruku, Sagbedo, Ole, Odigbo, Gboningbonin, Obago, Orunto, Sagbua, and Adaba.²³¹ They all naturally lived in the capital, and were the top cadre of military

²³¹ . Johnson, S.A. The History of the Yoruba's, great Britain, Love & Brydone Printers Limited, Thetford, Norfolk, 1921.

establishment who never surrendered in war. The Aare Ona-kakanfo went to war once in three years from which he must return as a victor or as a deadman in three months. He carried a weapon but with a special baton. The candidate for the office usually came from adamant warriors. His official uniform consisted of *Ojijiko* (a cap with the red feathers from the tail of a parrot), an apron of leopard skin, a pig tail on the head, and the royal staff which served him as a baton. The Onamodeke who oversees the youths wore coronets and held batons. The Aare-ona-kakanfo was not allowed to come back to the seat of power but lived in down-town towards the coast, possibly at the start of the eighteenth century according to Johnson.

4.5.5 Royal and Palace Officials

In the royal unit of Oyo, the top ranking men were five members of the royal lineage. Three were his 'official fathers', leaders of the three major branches of the royal family, two of the divisions barred from putting forward successors to the throne. Of these three 'fathers', Ona-Isokun was the leader of the line within which succession was restrained. He was a head of a large ward in the royal division; and one of his principal functions was to bury deceased Aremo inside his compound in Old-Oyo and after Atiba's death, they gave to the Oyomesi the names of qualified candidates for succession to the throne. The fourth royal bore the title of Mogaji Iyaji in the nineteenth century; today he is known as Iyaji, placed with the Oyo- mesi, above the *Mogaji*. He was the official 'Elder Brother of Alaafin, and his function was to ward off insults focused at his younger 'brother' (Johnson). On the other hand, he was the only one opportuned to rebuke the King, in the present time he joins the 'King's father' in naming successors; at Atiba's death, the Mogaji Iyaji died with the King.

The most powerful of the royalty, next to the Alaafin, was the Aremo-Eldest son-who shared many of the Alaafin's power and privileges, holding a large court, sharing markets'

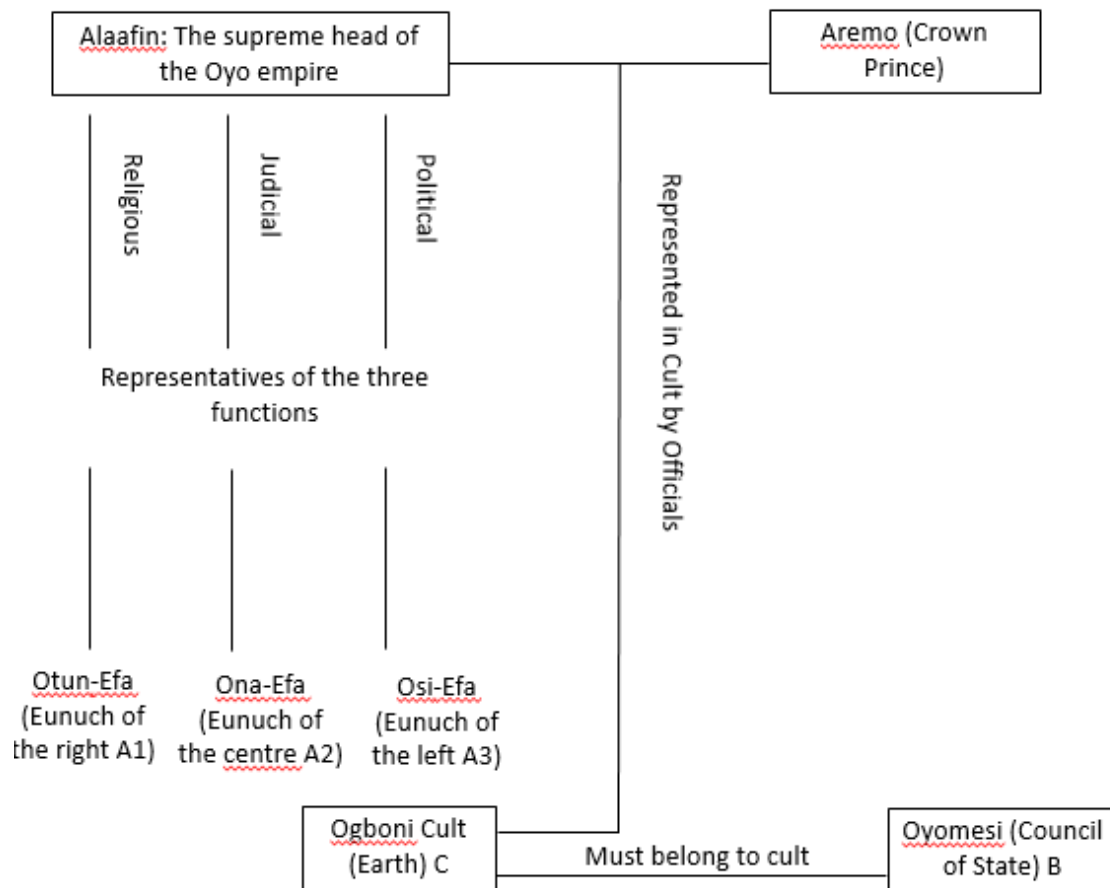
dues with him, and being lords of many towns and villages.²³² Unlike the King, he was not secluded or confined to his palace. Though he was the official heir apparent, it was part of the custom that the Aremo should die with the king, but it was ended during Atiba's reign when the Oyomesi were persuaded that he should be succeeded by his Aremo. The change was essential in strengthening the King, Aremo and Oyomesi relationship. Other royal offices were of very slight importance and grade with Mogaji. Most of these offices were restricted with the royal family under Ona-Ishokun supervision; they were given to heads of branches that were excluded from the royal succession; though Atingisi was the representative of Atiba's family. Another official was Agunpopo, the medicine man of pregnant wives of the King, formally assigned in the royal family; he was made so from non-royal friends, who became Mogaji of a large compound in Oyo.

The presence of Eunuchs in Oyo administration is unique. It is not found among other Yoruba except those that have association with Oyo. The Eunuchs act as agents of administration. It is a category with a large number of personnel; but the three foremost ones were Ona-Efa (the eunuch in the middle), Otun-Efa (the eunuch to the right), and Osi-Efa (the eunuch to the left). The functions of these three eunuchs have been departmentalized thus: Otun Efa, religion; Ona-efa, judicial; Osi-Efa, political. But the Iwefa are not heads of departments as in the bureaucratic sense, since their functions overlap. All the three have joint responsibilities in matters relating to religion, politics and justice. Although each of them has specific functions which could not be departmentalized, there is coordination of functions among the three. The three of them sit as judges in the palace court with Ona- Efa pronouncing the judgement, being the most senior. The Otun-Efa is the priest of Sango; the three cooperate to organize rituals and festivals. For instance, Ona-Efa is dominant during the Bere festival. However, Osi-Efa has more

²³².Bascom, W. *The Yoruba of Southwestern Nigeria*, New York, Holt, Rinehart and Winston, 1965, pp. 88-102.

religious functions than either of the other two. He is the priest of Ifa, Osanyin, Orisa Oko and Esu.

Diagram showing the Interface of the civil establishments in Oyo Empire



Source Kolawole Ogunmola: government in Oyo Empire

4.5.6 The Ilari

The Ilari were imperial (royal) agents who represented the imperial interests in all the government of the provinces and the tributary states (who were usually eunuchs). They acted as a link between the central government, district and the local government and ensure thorough supervision in a local government system that enjoyed adequate autonomy. They are palace officials, hundreds of Ilari's were divided among the sexes, and the junior members of the Ilari did menial tasks, while the senior acted as guards or sometimes messengers to the other world via sacrifice, they were called Baba kekere. The most senior are called Apeka (They will announce the King's name all over the places); he was titled Olori Eru, 'Head of Slaves', he led other slaves to greet Alaafin twice daily.

At any public ceremony, he danced in front of the Alaafin carrying iron rod, he organized the activities of the slaves outside the palace, and he himself was a Mogaji of big compound. The second in command, Are-Kudefu, received all guests to the palace and supervised the work of other Ilari working in the palace, such as Are Tujani, in charge of all food, and Are Mapemipa (Don't call me to kill) in charge of the King's arsenal, the discharge of guns on state occasions, also in charge of all the killing of animals for sacrifice in the palace. In the choice of wives, the Alaafin had to obey the Yoruba custom prohibiting marriage between kin. Women had many roles to perform in the palace, they were known as Ayaba (King's wives), but they were of different categories, highest in grade were known as Iya Afin, (Mother of the Palace), next were Ayaba proper with whom the King enjoyed marital relations; other female Ilari were slave officials, lowest in the cadre of female slaves. Among all the women in the palace the Iya Afin was close in rank to the Alaafin. All palace officials had official mothers, the three eunuchs had theirs_ the three Iya-Afins.

The Ilari were individually placed with women's Ilari as a 'mother' and they were collectively under the control of the Iya-oke Ile Osanyin, who was assisted by two

deputies.²³³ The Alaafin himself had an official ‘mother’, who ranked higher than any of the Oyomesi and usually was present when they had audience with Alaafin; she was present even if Bashorun wanted to see Alaafin, no matter how private the matter may be. The Aremo had two mothers, Iya Adodo his own mother and an official step mother. Most of the Iya were priestesses, who were in charge of the shrines in the palace, they doubled as mother of cults organization in the town, and they were assisted by the Ilari women, the most significant in the King’s political affairs were the Iya Naso, mother of the cult of Sango; Iya Nkolara, mother of the Ogboni cult and the Onalemole, the principal diviner, who was in charge of the room where the rite of Orun was performed; Eni oja, who supervised the King’s market with the help of three titled eunuchs from the Osi Efa camp and was the mother of Osi Efa himself.

The Zulu, like all the black tribes in Africa, had no written constitution since writing then was not known, and in their political organisation, there was no separation of powers²³⁴. Having in mind the main reason for the principle of separation of powers, which is to safeguard the individual freedom, this was not a problem in the traditional society. In Zulu society, importance was not so much on the guard of the rights of the individual but on how to safeguard the interests of the society as a group. Hence, the traditional judicial ladder of the Zulu people was based on the kinship or social system. This has been distinct as "the more or less permanent guideline of associations between the members of a community which demonstrates itself in a well-organized group-life, with shared obligations, privileges, rights and duties, of members, defining behavior patterns for each member towards one another, in molding the thoughts, feeling, and conduct of other members according to these arrangements so that it is only in and through them that the individual can achieve his personal self-goals and partake in the fulfillments offered by the

²³³.Asiwaju, I.A. The Western Provinces under colonial rules. In O. Ikime (ed.) Groundwork of Nigerian History. Ibadan: Heinemann, 1989, pp.112-135.

²³⁴ . Bryant, A.T. Zulu People as They Were Before the White Man Came. Pietermaritzburg: Shuter & Shooter, 1949, pp. 18-48.

life of people in community." The social organization is, yet, not stagnant but subject to constant change.

The lowest traditional social unit was the family home or Umuzi (with its components Indlunkulu, Ikhohlo and Iqadi and associated houses) under the control of the family head or Umninimuzi. As the most senior member in the family, he occupied a position of authority. By virtue of this, he settled disputes in an informal manner between members of the family.²³⁵ Really this power was not legal but belonged to the realm of family law as he could not impose his choices by judicial means. Appeals from the decisions of the family head would be transferred to the lineage or Urndeni court presided over by the most senior man in the lineage. This "court" has no precise name. In this "court", the procedure would be private in order to protect mutual understanding of the community. However the issues deliberated upon were of internal nature, those that follow henceforth were of common behavior.

Isigodi is part of a bigger area isifunda with an induna in charge. A number of family homes formed a ward or isigodi with administrative and judicial apparatus.²³⁶ The lowest political administrative division contains of relations and non-relations who are under the control of a specific induna. The induna who presided over the district or ward court did not depend on rank, but on appointment by the chief. The function of this court was to listen to appeals from the local or lineage "court", although it could also be a court of first case and could even be a court of investigation. With limited criminal and civil authority, it had the highest court in the tribe. In traditional Zulu society, the district court contained a body of the chiefs having jurisdiction in all cases. Both the lower and appellate courts organized under the rule of an independent chief. Although most of the members claimed descent from a common ancestor, the tribe increased from a homogenous entity to embrace other components. Thus with the passing of time loyalty to the chief rather than purity of birth

²³⁵ . Krige, E. J. The social system of the Zulus. Pietermaritzburg: Shuter & Shooter, 1965, pp. 92-98.

²³⁶ .Bryant, A. T. A history of the Zulu and neighbouring tribes. Cape Town : Struik, 1964, pp.118-122.

became the unifying factor in a tribe. Quite regularly the tribe is named after the chief himself or one of his descendants.²³⁷

The chief was the peak judicial officer in the tribe. Yet in the implementation of his obligations, he was helped by several kinds of council. As the highest judicial officer in the tribe, the chief accountable for the safeguard of the goods of all the members of the tribe²³⁸. He was the soul of the lawful life of the tribe, and on him laid the responsibility to maintain law and order o the entire tribe by being fair to the distressed and the need for punishing the criminals.

Chieftaincy was by heredity, the rightful heir ordinarily was the eldest son of the chief's great wife. This was the wife for whom the tribe contributed Ilobolo, and who would be considered as the mother of the tribe. The heir as a matter of fact had to succeed after the demise of his father. If he was too young to succeed the King, a regent would be chosen who according to the customs of the tribe would be the senior surviving brother to the deceased chief. Although, the regent's powers and rights came as a privilege²³⁹ he was supposed to leave his position without difficulty when the heir came of age, he occasionally made a show of resistance. In the absence 0- a son from the great wife, the son next in line would succeed. Marriage arrangements in a polygamous formation ensured that there would always be a son of the chief entitled to succeed

The propensity on the part of the regent to resist the rightful heir's claim, at times successfully, has led certain writers to insist that when it comes to succession to office what really counts is the presence of openly distinct rules as to succession, but rivalry for power procedures h was part of the political process. The rate with which ascension to political office deviates from the norms inevitably leads to the conclusion that this cannot be regarded as anomaly. It observes part of the usual political process where the catalogue

²³⁷ Ibid.

²³⁸ T. W. Bennett. Customary Law in Soyth Africa. Cape Town: Juta, 2004, pp. 68-76.

²³⁹ M. Gluckman. " The Kingdom of the Zulu in South Africa, M. Fortes & E.E. Evan- Partchard (eds.) African Political System, London, New York< Oxford University Press, 1940, pp. 26-38.

of norms does not decide the result of the process, but this is also influenced by the personal ability of the incumbent, not limited to regency only. This tendency is the reason why this view may be held: it cannot be recognized at face value that norms as to succession are of no consequence. Norms provide a standard, but can be departed from. In the area of legitimate law, regularly notices that unless strong sanctions have developed as penalty for abnormal conduct in a particular society, it is likely to breach the rules with impunity. This does not mean such behaviour is lawful. It merely indicates that the sanctions are weak.

The chief had the knowledge of the laws and customs of his people through the teaching of elderly men and by attending court sessions during his period of training.²⁴⁰ If the successor the ripe old age, the potential chief could even be involved in the decision of cases under the tutelage of the successor. In the pre-literate society, when there was no written record, memory would be relied upon to a great degree in remembering the laws and customs of the one exercised authority over a variety of crimes against the law, and the procedure was informal. No stringent distinction was drawn between crimes and derelicts especially in matter of procedure.

In the application of his jurisdictional roles the chief had no body of security, but made use of his court emissaries for summoning or arresting persons for trial, administering punishment and implementing his verdicts. Failure to pay a fine led to seizure of belongings, "mostly cattle, or in the event of opposition, an armed group was sent out to bring in all the offender's cattle, and if necessary to destroy his family home and kill him."²⁴¹ Such great powers, were, nevertheless, rarely used as part of the judicial procedure against him. Except if the chief suspected a conspiracy. While King Shaka united the Zulu nation, the various nations had more or less the same pattern of administration. He did not entirely destroy the structures. Chiefs and Izinduna, some of the hereditary officials, other nominees of King Shaka administered the provincial units and sub-sections of the Empire. Only now threads of power did not stop at the chiefly level, but the King had the last say.

²⁴⁰ B. Oomen. *Chiefs in South Africa*. New York: UKZN Press and Palgrave, 2005, pp. 120-126.

²⁴¹ A. T. Bryant. *Zulu people as They Were Before the White Men Came*. Pietermaritzburg: Shuter & Shooter, 19949, pp.55-68.

The King was, as it were, minister of justice and chief justice all in one. He was called to preside on difficult cases, and with the assistance of his councilors, men skilled in law and debate, good in pronouncement of justice.

This is in general the framework the politico-judicial apparatus which the Zulus had when the white people came into contact with them.²⁴² This apparatus, judged against the general background of the black people, was quite sufficient for the settlement of disputes in the Zulu community. The arrival of the white people was to accompany in a new era when the traditional institutions would be subjected to severe pressures because of differing values. As is usual, when two cultures meet, members of the two cultural groups often emphasize differences between the two groups. The efficient aspect of such institutions is regularly ignored or overestimated. The institution of chieftaincy was bound to suffer the same fate under the white administration.

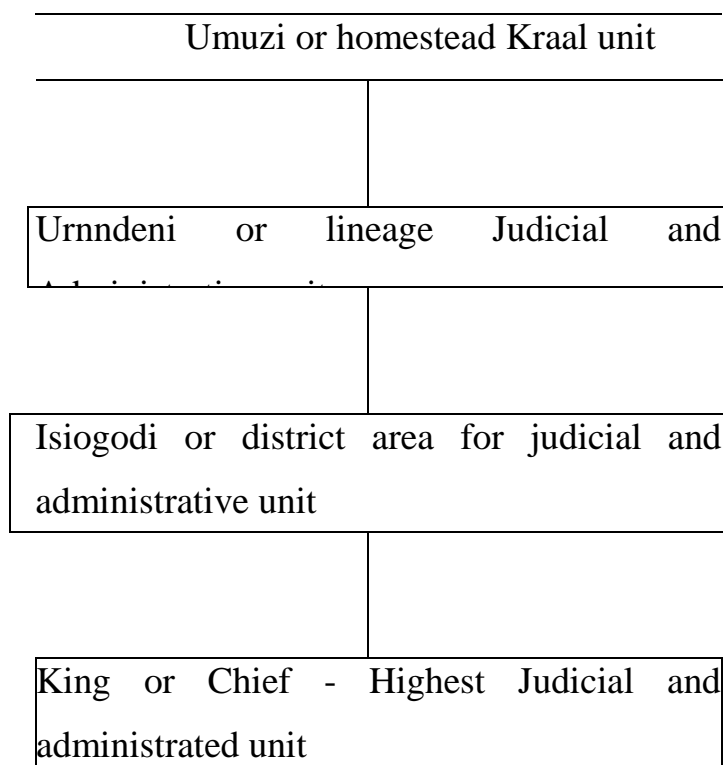


Figure 7: A diagram showing the administrative and judicial unit of Zulu Empire

²⁴² S.M. Seymour. *Bantu Law in South Africa*, Cape Town, Juta, 1970, pp. 57-66.

Source Kolawole Ogunmola: government in Oyo Empire

4.6 Judicial Independence in Oyo and Zulu Empires

Judicial independence is the capacity of a judicial service commission, eligible by law, to make decisions free of unnecessary pressure from outside sectors, especially the legislative and executive organs of the government.²⁴³ It is the liberty of judges in a judicial system to "decide matters before them objectively, on the basis of proofs and in agreement with the law, without any constraints, inadequate influences, enticements, forces, intimidations or intrusions, direct or indirect, from any quarter or for any intention."²⁴⁴ Judicial freedom is present when individual judges have three types of independence: internal, substantive, and personal.

Internal independence occurs when in the decision-making process a judge is free with his judicial staff and friends. Of the three, internal independence is the most challenging to measure empirically; given the concealment that shrouds judicial decision-making for example, the Basic Ethics on the Independence of the Judiciary, endorsed by the United Nations, counsel:

"The magistrates shall be assured by professional privacy with concern to their discussions and to private information learned in the course of their duties. ²⁴⁵Substantive freedom occurs when in the execution of his or her judicial function, a judge is subject to nothing but the law and the commands of his or her conscience. Individual liberty exists when "the terms and conditions of judicial service are acceptably secured so as to ensure that individual judges are not confined to executive control.

The Basic Principles on Legal Independence say every one shall have the right to be tried by any courts or tribunals using recognized legal procedures. More importantly, a court of

²⁴³ D. McQuoid- Mason. " Access to Justice in South Africa: Are there Enough Lawyers?" Onati Socio-legal Series. 2013, pp. 568-570.

²⁴⁴ J. O. Ajibola. Administration of justice in the Customary Courts of Yorubaland, Ibadan: University Press, 1982, pp. 54-62.

²⁴⁵ Access to Justice Blog 2012 Traditional Courts Bill Sparks Controversies in South Africa

<http://ma2j.wordpress.com/2012/03/26/traditional-court-bill-sparks-controversies-in-south-africa/> accessed 16 February, 2016.

law that does not use the duly recognized processes of the legal system shall not be created to transfer the authority belonging to the ordinary courts or judicial court of law.²⁴⁶ International human rights instruments, reciting the right of individuals, under the UDHR, "to a fair and public hearing by a competent, independent court, free of corrupt practices established by law."

This is obviously what the Basic Principles on Judicial Freedom meant when it suggested that judicial freedom "be assured by the State and enshrined in the Constitution of the country. The idea behind this formal separation is to separate the judiciary from likely arbitrary abuses by other offices of government through the grant of powers embedded in a constitution that those other branches cannot simply take away. The question this indicator invokes is whether courts are housed in a branch separate from the executive and legislative branches. The third indicator is exclusive authority, which requires that courts have the exclusive authority to decide cases based on their own competence and free from unwarranted pressures of any type.

In Basic Principles of Judicial Independence, it is for judiciary to have jurisdiction over all issues on judicial matters and have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.²⁴⁷ This is a dimension related to safely measure the ability of judges to carry out judicial duties free of unnecessary interventions from other state actors. Fourth, the final decisions of judges must be subjected to any revision outside the appeal processes provided by law, there shall not be any wrong or unnecessary meddling with the judicial procedure, nor shall judicial decisions by the courts be subject to modification.

There are different meanings and degrees of judicial independence, different forms of accountability, and different balances between independence and judicial accountability.

²⁴⁶ T. W. Bennett: Human Rights and African Law. Cape Town: Juta 1995, pp. 45-55.

²⁴⁷ A. Obilade: the Nigeria Legal System. London: Sweet and Maxwell, 1979, pp. 28-37.

Accordingly, these courts enjoy a reduced level of judicial freedom,²⁴⁸ Supreme Court justices, Judges of circuit courts of appeal, and judges of federal district courts; all of these judges are nominated by the President and confirmed by the Senate and hold office "during good behaviour," among other features. The federal courts comprise the Supreme Court, with both original and appellate jurisdiction, depending on the case; the Court of Appeal, with mostly appellate jurisdiction but also original jurisdiction in certain cases; and the Federal High Court, with exclusive original jurisdiction in several cases.

Present-day Nigeria is a multi ethnic state with over 380 ethnic groups, the Yoruba in the West, had an extremely centralized system centered on kings who joined political and religious powers together in a system branded by few checks and balances.²⁴⁹ Traditional legal systems and customary laws in Y Yoruba societies shaped part of a functioning, coherent, and consistent totality among the people's way of life. More specifically, contrasted from the western judicial system, in these and other societies, judicial proceedings were a tool of social control geared toward dispute reconciliation and maintaining peace, order, and stability in the community.

It is a fundamental principle of traditional administration that judiciary should be independent from state interference and influence by traditional rulers and chiefs.²⁵⁰ Judicial officers should be impartial and personally disinterested in the dispute they have to try. As Beinart once put it, in deciding, the law applying agency is meant to defend the right of the affected citizens, who have the confidence to pursue their case before the court of law, and the court will apply justice according to the law and will do so impartially and fearlessly and as quick as possible uniformly free of external pressure, such as the executive council and judiciary and others. The basis for this principle of judicial independence is to ensure that the interpretation and application of the law should take place objectively without interfering in the affairs of the court.

²⁴⁸ N.A. Fadipe: *The Sociology of the Yoruba*. Ibadan: University Press, 1970, pp. 132.

²⁴⁹ *Ibid.*

²⁵⁰ J. O. Ajibola: *Administration of justice in the Customary Courts of Yorubaland*, Ibadan: University Press, 1982, pp. 54, 62.

Before the advent of colonialism in Nigeria, there had been a system of adjudication in Oyo. The Oyo people had ways of resolving their civil and criminal cases; this institution is as old as the history of the Yoruba people themselves. More precisely, conflict resolution, as an establishment, constitutes a human stratagem for monitoring the structure of a particular society and maintaining its operation.²⁵¹ North opines that such bodies could comprise both formal and informal limits, which could be in the form of sanctions, speech rights, taboos, customs, or mores. Where such an institution is recognized, the constraints will come in the form of laws, property rights, and constitutions. Institutions help control and guide social and interpersonal relationships of individuals; judicial institutions are the main approach of achieving such control. This assertion hinges on the fact that, although Oranmiyan claimed a common progenitor with Oduduwa, their judicial system varied slightly from one subgroup to another.

The independence of the judiciary in Oyo can be demonstrated in their judicial processing, since political administration in Oyo paves the way for each organ of government to operate freely, without interference of other arms of government.²⁵² The Oyomesi are the king-makers, also most noblemen and principal councillors for the state are the voice of the nation and their main duty is to protect the kingdom, advice the King on state issues. Each of them has its official duty to perform. They are also involved in judicial matters, they go to court in the morning and afternoon, send to Alaafin at other times when their absence is unavoidable. The Eunuchs also have a prominent role to play in the judiciary process of Oyo, they are palace officials and occupy a powerful position. They are six by tradition but during the period of Atiba it was reduced to three. Ona Efa the chief of the eunuchs hears and decides suits and appeals brought to the King each time his majesty is absent from the court. His decision is as good as the King's, he is also a legal adviser to the King.

²⁵¹251 O. Adewoye. *The Judicial System in Southern Nigeria 1954-1954* London: Longman Group Limited, 1977, pp. 129.

²⁵² N. A. Fadipe: *The Sociology of the Yoruba*. Ibadan: University Press, 1980, pp.188

Oyomesi are next in hierarchy to the Alaafm, each of these noble men has a court in his quarters which he adjudicates. Nevertheless, the Baale performs the same function at the lowest level of administrative and judicial hierarchy with the assistance of other senior members in the compound. The King cannot influence the judgment on any case brought for hearing, and the judge has to consult with other members of the court after listening carefully to the submission of the plaintiff and the defendant on any case before judgment can be pronounced.

Oyo judiciary institution satisfies the organ of governance noticeable in centralized monarchical systems.²⁵³ This implies that the Oyo political administration is enshrined in a centralized system of government. Indeed, in a civil society, law and order prevail with a given authority saddled with the affairs of the state. Within the context of monarchism, consequently, the notion of hierarchy of power and social ordering prevails. The legality of power often allows the existence of the rule of law according to their tradition and culture for good governance, observable at the level of maintenance of law and order and is the basis for jurisprudential tradition.

The origin of the Oyo judicial system is very difficult to locate owing to the fact that it is shrouded in mystery. Juristic custom in Oyo developed with the political culture which posits of the concept of authority believed to have been transferred from the family structure. The judicial system in Oyo was as old as the political organization itself.²⁵⁴ The political structure informed the position of a king as overseer of the juristic tradition. It is significant to stress, consequently, that the Yoruba King was not just an embodiment of power outlay in Yoruba society, but also an avenue to demonstrate the dynamics of juristic practice. The Yoruba traditional rulers were the custodians of legal awareness in the Yoruba society. Hence, he wielded power and authority through the symbols of

²⁵³ J. A. Atanda. *An Introduction to Yoruba History*. Ibadan, Ibadan university Press, 1980, pp. 22-25

²⁵⁴ Olaoba, O. b. "Ancestral Focus and the Process of Conflict Resolution in Traditional African Society." In Albert, I.O. (ed). *Perspectives on Peace and Conflict Studies Program*, 2005, pp. 21-32.

jurisprudential tradition. His rule was determined by the level of understanding, cooperation, application and interpretation of the judicial system in his kingdom.

Oyo indigenous judicial system was rooted in the customs and tradition of the people. It was popular and recognized by the people over which it was operated. It is therefore significant to emphasize the fact that, the judicial system started with the people; it originated from their mindset and psyche.²⁵⁵It encoded their philosophy and rationality. Therefore, the Oyo indigenous judicial system was people-driven, authority-based and result-oriented to enhance peaceful co-existence and mutual understanding in the society.²⁵⁶

The court system in KwaZulu-Natal is devoid of interference of kingship institutions. The justification for the belief of independence of the judiciary in Zululand is to confirm the interpretation and application of the law which should take place accurately without meddling or prejudice. The significance of judicial impartiality has been immortalized in the word of Lord Hewart that:

"It is not merely of some fundamental importance but essential importance that justice should not only be done, but should obviously and undoubtedly be seen to be done, nothing is to be done which creates a suspicion that there has been an improper interference with the course of justice. „²⁵⁷

Objectivity, which is also identified with fairness, entails that no inappropriate considerations should bear upon one's verdict. Complete objectivity is realized by personal consciousness that total absence of predeterminations in the human mind is not likely. This called for their exclusion where they are unimportant. Gratification interest in the outcome of an action debar the judicial officer in deciding the matter.²⁵⁸ It is irrelevant that the interest is trivial or its existence is extremely doubtful to influence his judgment. The

²⁵⁵ A.K. Ajisafe: *The Laws and Customs of the Yoruba People*. Lagos: Kash and Klare Bookshop. 1946, pp. 117-119.

²⁵⁶ I.S. Eades. *Changing Cultures: The Yoruba Today*. London: Cambridge University Press, 1980, pp. 138.

²⁵⁷ Ibid.

²⁵⁸ D.S. Koyana. "Traditional Courts in South Africa in the Twenty-First Century" in French J, Galizzi p and Higgins TE(eds) *The Future of African Customary Law*, Cambridge University Press, New York, 2011, P142.

independence of the judiciary is guaranteed in many ways in different countries. These comprise, inter alia, the honesty of the judicial officers, criteria for appointment, tenure of office, provision of suitable payment and the protection of the dignity of the court. Integrity and honesty of the judiciary is an important component of judicial liberty. Integrity means resistance against the temptation to do something illegal or untruthful for the sake of personal gain. Judicial officers' integrity includes among other things purity, honesty; though it is not learnt, but it is more of innate quality, however it may be cultivated.

Hence, the criteria for the appointment of judicial officers must be safeguarded and respected. As they are; these challenges of judicial liberty must be addressed, without them a judge remains incorruptible, and with them, the feeble and restricted judge can yet repel the progress of justice. The only acceptable and proper way of appointing a judge is to choose a good candidate. Though there is room for political selections, ideally the appointments of judges are made from experienced advocates. The manner of such political appointments notwithstanding, once they have been made, there is no viable evidence that after appointments they executed their duties in a prejudiced manner.²⁵⁹

In many countries, the tenure of office and security of judges is protected.²⁶⁰ They are regularly appointed into the office. In South Africa, jurists are appointed by the President of the country, based on their wealth of experience in the profession and they receive payment approved by parliament. Judges cannot be removed from office except by the President based on the recommendation of state parliament on the grounds of misconduct or incompetence. Their salary should be reviewed periodically while in office. The main idea behind this principle is that judges should not be in fear of their welfare package including their remuneration, neither should they be influenced on the assurance of better welfare packages. The integrity of the judiciary is protected by the offence of contempt of

²⁵⁹ T. W. Bennett: "The Compatibility of African Customary Law and Human Rights". Cape Town: JUTA JURIDICA, 1991, pp. 129-132.

²⁶⁰ Boko. B.D. "": Fair Trial and the Customary Courts in Botswana: Questions on Legal Representation". Criminal law Forum, 2000, pp. 444-460.

court which also guarantees court freedom to give its decision. Any blame or behaviour which is intended to denigrate the judge or to disregard the administration of justice constitutes an offence called contempt of courts. Positive criticism of the application of law is however permitted according to Lord Atkins.²⁶¹

Apart from the representative of the then department of cooperation and development, persons who made suggestions to the Hoexter commission of inquiry were serious about these courts, and suggested their abolition.²⁶² The defensiveness of the unit of cooperation and development as centered on the convenience of black administration by this section if administrative and judicial roles involving the black people remained in its hands.

The incentive for an opposing view was centered mostly on the prompt economic improvement of black people in the past; the extravagance of the twin courts system in relation to man power resources; the training of black attorneys largely in Roman Dutch law and their dealing with that law in practice; the point that some black people look at the separate court structures as part of the "Apartheid Policy" which downgrade them to an inferior court system; the rejection by black people of the judicial structure which dwindles their human dignity; the apparent lack of objectivity in the fair justice administration if the very sector was liable for the policy in admiration of black people were to preside at the trial of a black for violations connected with the implementation of the procedure; the dwindling importance of native law except to some extent family law; and the irregularities in the request for the native law due to the presence of separate courts.²⁶³

The Hoexter commission of inquiry deliberated on further oppositions to the dual court system. These comprise: the replication of staff and amenities; double criteria as regards housing, amenities, educational qualifications, practical exercise and an overall procedure concerning the administration of justice; disparity before the law as a result of separate

²⁶¹ T. W. Bennett: "The Compatibility of African Customary Law and Human Rights." JUTA JURIDICA, 1991, pp. 129-132.

²⁶² Bennett, T.W., Human Rights and African Customary Law. Cape Town: Juta, 1995, pp. 118-127.

²⁶³ S.B. Burman: "Use and Abuse of the 'Modern' versus 'Traditional' Law Dictionary in South Africa" 12 (2), Verfassung and Recht in Übersee/Law 1979, p. 112.

courts; difficulties for South African police and prisons staff; and that the maintenance of separate courts was contrary to the rationalization strategy.²⁶⁴ The commission was pleased that since the creation of special courts for black people, they had undertaken an important modification as regards their standard of living, life-style, family life and education.

The urban black person was subject to South African public law and statute in commercial transactions. To limit them under the existing special attention to the commissioners' courts in civil lawsuit would be unfeasible and perverse. The suppression of the people of the same nation to separate courts for any crime at all basically on the grounds of race was in the commission's opinion, unnecessary, humiliating and undesirable. The commission therefore came to the conclusion that except for the courts of chiefs and headmen, the dual court structure - South Africa was no longer satisfactory and should be integrated. Special courts for black people have since then been eradicated.

4.7 Right to Justice among the People in Oyo and Zulu

Although the average citizen in Oyo has the right to exercise their choice of dispute resolution, a number of factors account for apportioning of traditional courts to members of the society, traditional courts are not rigidly bound by procedural rules in adjudicating cases. Secondly, the accessibility of traditional gathering is fundamental to the first step in dispute resolution, that right of reporting a dispute also informs disputants' exercise of choice. The administration of customary courts in Oyo has been predominantly carried out through traditional methods because they are more accessible to people.²⁶⁵ Processes involved in customary or traditional courts are observed by the plaintiffs as faster, cheaper, and more harmonious with their traditional custom and cultural heritage.

Having discussed customary law, there remains the job of integrating traditional and contemporary modern conflict settling methods in Oyo, to help increase better access to

²⁶⁴ C. Hoexter: "Judicial Policy in South Africa" Vol. 2, SALJ 43(6), 1986.p.46.

²⁶⁵ O. Adewoye. The Judicial System in Southern Nigeria, 1854-1954, London: Longman, 1977, pp.120-134.

justice or people involved in a lawsuit. ²⁶⁶So following an arc-like path that starts off with a summary the colonial influence on the development of legal systems in Nigeria, which resulted in dual and sometimes multiple, normative orders existing side by side, it moves on to show how the plural legal wide area of beautiful land is configured, using examples from some communities Nigeria. The key features of belief that the world consists of two opposing things were highlighted, including the superior position given to the received legal system as well as the difficulty and extent of using the formal justice system. ²⁶⁷ The differences among series of events in traditional justice systems and formal courts are identified as a starting point for any process of integration.

Basically, Oyo depended on the wisdom and law-related skills of their local leaders to resolve conflicts. Conflicts were presented to members of the community, with the traditional leader as the head with his council of elders presiding over the meeting. The traditional chief asks questions and seeks advice from his chiefs before the judgment would be given to reconcile the disputants after the parties to the argument had explained their account of the conflict. Dispute Settling, which needs decision making by the King and his advisors - this way encourages total participation and a fair hearing.

It could be argued that the pre-colonial Nigerian societies operated as units. The loose translation of a unit is a single item, which is a subdivision of a whole. Therefore, when a conflict arose between members of a unit, the entire community would become involved in resolving the dispute, the rationale being that a conflict between individuals would automatically affect the whole community.

Predominantly, the dispute resolution process in Oyo societies provided individuals with an opportunity to express their grievances, an element which connotes fairness. Justice in these indigenous processes was for the most part simple, understandable and flexible; and

²⁶⁶ J.O. Asein. Introduction to Nigerian Legal System. Lagos: Ababa Press Limited, 1998, p.184.

²⁶⁷ N.A. Fadipe: The Sociology of the Yoruba. Ibadan: University Press, 1970, p. 185.

for those reasons, popular, speedy, inexpensive and accessible²⁶⁸. Dispute resolution mechanisms also enabled the disputants to express themselves fully, without complexity or formality, and yet assured them of a knowledgeable and just resolution that would maintain communal relations. Traditional tribunals promote reconciliatory processes, in opposition to the technical rules in Western courts, designed for punishment - not social healing.

One way of strengthening traditional institutions of conflict settling and improving integration would be to fund their organization structures in a way that improves access to conflicting parties. Given their possible ability to provide easier access to rural and city-based residents looking for traditional justice procedure, it is important that traditional justice institutions are enabled to deliver effectively.²⁶⁹ For instance, the Nigerian governments mostly provide money for effective running of the courts, but this has not improved wider access to rural people to be complainants. As a result, it has been noticed that there is a need for more financing of traditional courts of law, to provide for, among other things, the training for customary courts staff and judges. Careful analysis must, however, happen before anyone thinks that the core strength of traditional conflict resolution systems is the flexibility of their processes. It is therefore very important that these factors are taken into the process of carefully thinking about something in developing a judicial system.

Generally speaking, the right to justice in Oyo courts was informal, and varied with facts that surround someone. For instance, the Oba's (King's) palace was used as the court site. This is the market place which was always located in front of the Oba's palace. In the trial of a criminal case that did not involve a government official, the suspect and the litigant were physically present. The litigant would charge the suspect into court; the suspect would give his or her own defence. Members of the council would subject both parties to

²⁶⁸ Anthony. O.J. Conflict Resolution in the Traditional Yoruba Political System. Cahiers D'études Africaines, Vol. 13, No. 50, EHESS Publishers, 1973, pp. 275-292.

²⁶⁹ G. Fawehinmi: Court System in Nigeria: A Guide. Lagos. Nigerian Law Publication Limited, 1992, p 185.

examination²⁷⁰. Witnesses would be called. After serious and careful thinking on the case, the most senior chief, or at times the king himself would sum up the decisions.

If there were no witnesses, or the facts of the case were not well-established, the suspect would be left to his or her sense of right and wrong. The person might, however, be sworn an oath according to Oyo traditional belief system. The magical effectiveness of an oath is well guaranteed after the promise had been given; the matter was left to the judgment of the gods of the land, whom the people believed would bring bad luck to those who tell lies in court.

On the various modern legal systems of the Zulu people, they have right access to justice, and these are generally recognized. This may be implicit from the constitution, or it may be based on the common law. This does not mean that a person has a similar right to the consideration by the courts of the substance of his complaint.²⁷¹ Moreover, there may be a number of instances where this right may be limited or even non-existent. This right may furthermore be resisted by the means of a prospective litigant. Litigation in the modern world is quite expensive. No one without substantial resources can contemplate litigation. Thus the right of access is rendered useless because of financial incapability, in this context, the criticism in England that justice is open to all may not be realizable because of insufficient financial ability.

In this respect there is a remarkable difference between the procedure of the legal systems in ethnic societies and in modern industrialized societies. In ethnic societies, access to justice is hardly an issue at all; however in modern developed societies, this is fairly a crucial problem. This can be attributed to the growth of urban life and industrial economy²⁷². These phenomena have created a division of a large section of the populace in a country's system of administration of justice. The administration of justice is a professional matter. This inevitably leads to the professionalization of the law with the

²⁷⁰ Ajisafe, A.K. *The Laws and Custom of the Yoruba people*. Lagos: Kash and Klare Bookshop. 1946, pp.122-124

²⁷¹ N. J.J. Oliver: *Indigenous Law*. Durban: Butterworths. 1995, pp.145-154.

²⁷² M. Cappelletti: *Towards equal Justice: A Comparative Study of Legal aid in Modern Societies* New York: Dobbs Ferry, 1975, pp.122

result that having access to justice becomes a cumbersome, dilatory and expensive process. Moreover, ignorance of one's rights, inability to secure legal advice, and "hardened language barriers" deprive, to a large extent, the poor and powerless members of the society of legal redress. Opined by Cappelletti:

"It has been recognized that the impediments to redress exist because the problems it [the legal institution] handles are problems defined by the institution, not the society; the solutions it generates are solutions for the institution, not the society. If carried to an extreme, the dispute process becomes wholly involved, hermetical, ²⁷³the exclusive domain of specialists, and comprehensible to them alone.,,

In traditional society on the other hand, the position is otherwise as the legal process is characterized by the knowledgeable and informed participation in, and the shared control over, the proceedings by both litigants in a given case²⁷⁴. But, as Koch further points out, when socioeconomic organization brought about by 'development' and by innovations imposed by colonial or national governments bent on modernizing a country's justice administration disturb the traditional legal system, people may find their access to justice impeded. This process generally occurs simultaneously with the decay of the extra-legal social controls. ²⁷⁵

The most effective way of facilitating access to justice has been the provision of legal aid. This method of helping the indigent has been applauded in that it enables the poorer members of society to obtain legal representation more or less like those who have means without the necessity of nationalizing the legal profession and thus curtailing or threatening its independence by subjection to governmental control.

4.8 Fair Process in the Dispensation of Justice

²⁷³ Ibid.

²⁷⁴ Cappelletti, Mauro: *Judicial review in the contemporary world*. New York: Bobbs-Merrill, 1971. pp.52-61.

²⁷⁵ Bekker, J.C. *Seymour's Customary Law in Southern Africa*. 5th ed. Cape Town: Juta.1989, pp. 128-133.

Peaceful coexistence and cohabitation was the watchword of the Oyo. They believed in sharing everything, whether fortune or misfortune. A person was first a member of society before being understood as an individual. The Y oruba, therefore, tried to purge themselves of rancour that might tear their society asunder according to Ijagbemi, they joined hands together to cleanse the land when it was secular.²⁷⁶ The Y oruba evolved Ogboni Judicial, and Religious Obligations which are the roles of the Ogboni. Oyo traditional adjudicatory systems have four court strata with the "ad hoc court" being the fifth. As a political unit, the community was recognized as the synonym of the town, as the community contained all of the political structures of the town.

Judicial arbitrating system began from the family, every married man was the head of his own immediate family and it was his responsibility to settle any animosity among family members promptly. He would listen to the appellant first, and then the suspect would be allowed to resent his or her own defense, they would call on witnesses, if any, can be called.²⁷⁷ The head of the family would try to be impartial as much as possible to both parties involved, and would not identify a party as guilty and the other as innocent. This was not how to resolve the civil cases among the Yoruba. In such cases, either of the two parties could have reacted excessively in some way. Consistently, neither could he be freed of blame. Nevertheless, one party might be seen as guiltier than the other. The arbitrator would tell both parties where they had behaved badly, and otherwise. After telling each party its mistake, he would then settle the case either by asking the guilty side to apologize to the other, or simply warn both of them to abstain from bad habits that might generate bad blood. That was how a civil case was usually settled. But if one party was not contented with a settlement, he or she could appeal to the compound "court" by simply reporting the case there, headed by the oldest man in the family.

²⁷⁶ Ijayegbemi, E.A. a note on Temp Kingship in the early 19th Century. In O. Ikime& S. Osob, (eds.) *Tarikh*,4(2): United Kingdom, 1973, 57-66.

²⁷⁷ T.O. Elias: *The Nature of African Customary Law in Cotran*, E. &Rubin, N.N.(ed). Reading in African law. New York: Africana Publishing Corporation, 1970. Pp. 75-77.

The family head was usually the oldest man in an extended family. Members of the same extended family built their houses around their forebears' compound. The extended family members might be related by blood or marriage. The Yoruba regarded blood as sacred; they aimed never to do anything that might harmfully affect a blood relation or kinfolk. To them, blood was clearly thicker than water. If any member of the family debases the "common blood" (Alajobi), the family would come together to appease the common ancestors.²⁷⁸ The Compound head's "court" served as the "court of appeal" to the nuclear family's "court." In this "court," every adult, married or single, had the right to be present and contribute to the conversation. The family head was the "judge." He would try to be impartial to both sides, and only passed the verdict based on the contributions of all present.

The litigant or complainant would state the complaints and call witnesses, and the defendant and his or her witnesses would follow suit. Olaoba views it in the sense that during the presentation of their cases, each presenter had to squat (male) or kneel (female) as a show of respect to the elders. After listening to both sides, the family head would invite the adult members of the family present to comment on the evidence before them. It was the family head's responsibility to summarize the contributions of the mediators and settle the case. The adjudicator's comments might be contributions of facts or questions to establish facts.²⁷⁹ A dinner party sometimes followed the settlement to return the mutual love within the family.

Libations were poured to appease their ancestors before they themselves consumed any food or drink.

Civil cases fell within the control of the Compound head's "court." A civil case that involved members of two or more extended families would be transferred to the Quarter's head court. Each quarter was made up of many compounds that mayor may not have been related by blood or marriage. The Compound head was the representative chief of his ward

²⁷⁸ O.B. Olaoba: Yoruba Traditional court model. *Journal of the Humanities*, 1(2), 1997, p.58.

²⁷⁹ *Ibid.*

in the Oba's court. He appreciated the endorsement and recognition of the Oba and reserved the right to conduct preliminary investigations in criminal cases. He could pass judgment on subtle criminal cases such as theft, adultery, and sometimes witchcraft.²⁸⁰ All appeal cases from the family head's "court" were passed to his court. He was normally supposed to pass the verdict in conjunction with some compound heads whose members were not parties to the case at hand. All members of the quarter or outside it might make up the spectators in this "court."

As it was in the family head's "court," case presentation was done either by kneeling down of female or squatting by male. No one presented a case sitting down or standing up. Each person was required to show respect to the elders. Case presentation in the quarter head's court was not different. After listening to the litigants and their witnesses, every adult present had the right to cross-examine either the witnesses or the litigants²⁸¹. Their main goal was the harmonious settlement of the case, and the quarter heads summarized the contributions of the other adults present. The Quarter head's would have the final say on the case, and had the right to fine the party found more guilty, while the party considered less guilty might be set free with no punishment. However, during the colonial era, both sides were fined: each was expected to pay some amount of money to the coffers of the town, with the more guilty party paying more.

Every appeal from the Quarter head's court was addressed by the Oba's court. The Quarter's head would certainly be a member of the Oba's court, as a chief in the town, but he would have to allow the other chiefs to arbitrate on cases that came from his quarter. He customarily introduced the sides involved in the case.²⁸² The Oba gave judgment after listening to the plaintiff, defendant and to the contributions of his chiefs. Whatever verdict that was given was final, except when a verdict was given in a town under the authority of

²⁸⁰ A.K. Ajisafe: *The Laws and the Custom of the Yoruba People*. Lagos: Kash and Klare Bookshop. 1946, pp.73-74.

²⁸¹ O.B.Osoba: *Yoruba Legal Culture* Ibadan. FOP Press, 2002, pp. 80-83.

²⁸² A.K.Ajisafe: *The Laws and Custom of the Yoruba People*. Lagos: Kash and Klare Bookshop, 1966, pp.213.

another superior town. The aggrieved plaintiff could appeal to the court of their autonomous king.

In general, the technique of conducting trials in Oyo Yoruba courts was informal, and diverse with situations. For example, the marketplace or the Oba's palace was used as the court site. This is why the marketplace was always situated in front of the Oba's palace. In the trial of a criminal case that did not include a dignitary, the suspect and the litigant were physically present. The litigant would charge the defendant in person, and the defendant would give his or her own defense. Members of the Council would subject both sides to scrutiny.²⁸³ Witnesses would be called. After serious discussion on the case, the most senior chief, or at times the Oba himself, would sum up the decisions. If there were no witnesses, or the facts of the case were not well-established, the defendant would be left to his or her conscience. The person might, however, be sworn to an oath. Generally, Yoruba belief in traditional judicial systems, the magical efficacy of oath could be appealing and well guaranteed. After the oath had been taken, the matter was left to the judgment of the gods of the land, whom the people believed would bring calamity to those who had sworn deceitfully.

Taking an oath was no mere solemn declaration of telling "the truth, the whole truth, nothing but the truth", which is a feature of the Western court; it was a self-imprecation, charged with punishing powers.²⁸⁴ It was taken on the names of some terrified gods or sacred objects charged as magical phenomena symbolizing the kind of punishment the oath taker wanted to befall him if he swore falsely. The individual's society would exonerate the oath taker and fully integrate him back into society if no disaster befell the person after a short period. But if any calamity befell the oath-taker soon after the swearing, he would be pronounced guilty and the society would condemn him.

A very conspicuous feature of Yoruba judicial method was the leniency with which female criminals (apart from witches) were treated. A woman was seldom formally arraigned

²⁸³ T. Onadeko. Yoruba Traditional Political and Judicial Structure. *African Study Monographs*, 29(1), 2008, pp. 54-46.

²⁸⁴ T.O. Elias.: *The Nature of African Customary Law*. Manchester: Manchester University Press, 1952, p. 211.

before an Oba's court on a criminal charge. If she committed a crime, say theft, she might be sent to her husband or father to be summarily reprimanded.²⁸⁵ The husband might simply divorce her, and the matter ended there. However, if she was accused of witchcraft, she might be tried by the Ogboni cult or handed over to the Polo deity, who was believed to be an impartial judge of witches. If guilty, "she could be stoned to death or decapitated" as opined by Meek, or forced to drink Obo (sassafras). In fact, the most heinous crime a woman could be charged with was witchcraft.

More often than not, a case that involved a dignitary or the Oba himself was passed to the Ogboni cult. Usually, before the report and subsequent judgment, that dignitary might have punished through rumor mongering, gossip, and ridiculous songs. He was also sometimes physically attacked. A good example of such communal manhandling was the attack on Bashorun Gaa of the Old Oyo Empire. The probability was that the Ogboni listened to and died the trial, as it was in the open courts.²⁸⁶ Whatever judgment was arrived at by the Ogboni cult was generally final, because most of the chiefs were members of the cult. If an Oba 'as found guilty of a scandalous crime or his rule became oppressive and unpopular, he might be tried by the Ogboni. The trial would not give the Oba the opportunity to defend himself, in which his subjects would demonstrate outside the palace walls; the chiefs would meet at the palace gate, send word to the King that he was no longer wanted, and subsequently refuse to answer his call. When this happened, the Oba was expected to "open the calabash," an indirect way of telling the Oba to commit suicide or in other words telling the Oba to go and sleep. The calabash contained a powerful charm made of parrot's eggs. It was taboo for any Oba to do this and survive. It is tantamount to sure death for the Oba.

Bascom says, besides the court types mentioned above, disputes could be arbitrated instantly when they happened in a community setting. Such instant settlement is referred to here as "street ad hoc court." The arbitrating elder(s) might or might not know the sides

²⁸⁵ W.T. Bascom: *The Yoruba of Southwestern Nigeria*. New York: Holt, Rinehart and Winston, 1965, pp. 145-146.

²⁸⁶ J.A. Atanda: *An Introduction to Yoruba History*. Ibadan, Ibadan University Press, 1980. P.38.

involved in the dispute. The Yoruba believe that civil cases were usually treated instantly after they had happened. But a criminal case could be transferred to the Oba's court for resolution. Should it be a criminal case, it was the obligation of the elder present to calm the aggrieved party, protect the defendant from mob action, and refer the case to the Oba for suitable action.²⁸⁷ A simple civil case, such as a fight during which neither injury nor wound occurred, was usually settled by the elder(s) present. No fine would be awarded and no guilty one identified. The purpose of such quarrel settlement was not to discover who was found guilty or acquitted, but resolution. Each side's story could be deliberated upon responsibly in some way, and the mistakes of each would be pointed out and the matter amicably settled. Verbal warning was taken as enough penalty for the more guilty party.

Fair processes are the main attributes of law; they are rationality, uniformity, certainty, impartiality, generality and equality. Moreover, the individual must be ensured fair processes in disputes with other individuals and the community. Yet, just rules in themselves are not sufficient to dispense justice. A system or procedure whereby they can be justly applied is a prerequisite. One should not fall into the impression that a procedural system can completely exclude the possibility of a failure of justice particularly because of the human factor.²⁸⁸ But ereare essential principles, the observation of which will curtail the risk of unfairness occurring in dispensation of justice.

It is a required principle in western societies that each side has a right to a fair trial. This requires a method or procedure whereby each person has access to lawful counsel and representation in the courts.²⁸⁹ It must defend him from penalty by the state without trial by a competent court. According to the procedures of natural justice the bench must be objective and must decide the case without being unfair by inappropriate considerations

²⁸⁷O. Kayode. Judicial Administration in a Changing Society- Customary Courts in Western Nigeria. *Verfassung und Recht in Obersee / Law and Politics in Africa, Asia and Latin America*, Vol. 8, No. 3/4 URL: <http://www.jstor.org/stable/43108480> Accessed: 25-04-2017, 1975, P 225.

²⁸⁸E. Kahn: "Recognition of Native Law and Creation of Native Courts" in Hahlo & Kahn (Eds). *The Union of South Africa: The Development of its Laws and Constitution*. 1960, p.126.

²⁸⁹H. R. Hahlo. *The South African legal system and its background*. Cape Town: Juta, 1973, pp. 98-106.

from any quarter. The principle of fairness of the bench is articulated in the Hahlo's rule.²⁹⁰ It has already been stated above that a person who has a concern in a case or is likely to be unfair because of resentment, friendship or relationship is prohibited from hearing the case.

The court must resolve the disputes between the parties in the light of the proof presented to it only. It should not use information received otherwise; it cannot take into account anything which has not been given in proof before it, except facts which have been known or those which are so notorious as to come within the principle of judicial notice. The party to be heard must be given a reasonable chance of presenting his case. This is known as the Hahlo and Kahn's rule. Hahlo and Kahn state that:

*"It is against 'natural justice' that verdict should be given against a defendant person in a criminal trial or one of the sides in a civil trial without allowing him to present his view of the case to a bench ready to listen. Thus in a criminal case defendant persons should never be left with the belief that they have had anything but a just trial. They should never be given cause for feeling that the presiding judicial officer adopted anything but a calm, neutral attitude towards all issues which he is called upon to decide".*²⁹¹

The Hahlo rule involves that the suspect must have notice before the hearing not only that proceedings are being brought against him but also of the nature of the litigant's case so that he can make the required provisions for the hearing. The litigant must also be adequately informed of the nature of the defense. Each party has a right to a suitable opportunity to present his proof and deliberate on it in court. Although the judge may occasionally specify that he does not wish to hear argument from one of the parties, if without hearing the party he proposes and does give judgment in his favour, if he fails to give enough chance to one of the parties to present his case then gives judgment in favour

²⁹⁰ Ibid.

²⁹¹ Ibid, p. 68

of the other, the judgment will be set aside and a new trial be ordered. This also means that counsel must be free from undue interfering by the bench in the conduct of his case.

This is centered on the antagonist arrangement and has not much importance in the Continental system. It is viewed as a precaution to the fairness of the proceedings.²⁹² If the judge assumes to scrutinizing of the witnesses, it is felt that he may give the appearance of bias and the complainant may feel his case was not fairly and fully heard. Although a judge may mediate and ask questions from a witness or from a counsel, if this is necessary for him to clarify his mind, he is not supposed to deny a party an adequate opportunity to present his case either by giving a decision prematurely or by undue interruptions. His role is to hear and to determine the issues raised by the parties and not to conduct an investigation. If he does so, a new trial will be ordered.

The right to a fair trial also includes the right to be represented by counsel of one's own choice. He must be afforded an opportunity to cross-examine witnesses called by the other party with the purpose of testing the reliability of the evidence given. Preferably, justice needs the fulfilment of truth. This is attained if in a criminal hearing the guilty are sentenced and the innocent are discharged and acquitted, and if in a civil case the verdict of the court is centered on the accurate truths of the case. Kahn, rightly points out:

"Truth is an elusive goddess, and judges, like other mortals, are not omniscient. An accused -person or a party to a civil law suit may fail to avail himself of the chance of presenting his case or may state it badly; there may have been no witnesses to an incidence or it may not be possible to find them, or, if witnesses do give proof, they may be lying or mistaken. Moreover, in the nature of things, on the same proof one court

²⁹²Theophilopoulos, Constantine. Fundamental principles of civil procedure. Durban: Lexis Nexis Butterworths, 2006, pp. 225-232.

may convict the accused, another acquit him, one fine for the plaintiff in a civil case, another for the defendant."²⁹³

Yet the fundamental rule is that truth should not be proven by resort to unsuitable means, torment or third degree procedures. The guidelines of proof lay down what proof is acceptable and which is unacceptable. One of these is a rule against unfounded information proof. The other which is important to impartial hearing is the rule that one cannot be forced to answer a question if his answer would tend to implicate him. Every person is presumed innocent until the contrary is attested. The responsibility is on the one who makes an accusation or alleges facts to prove them.

The hearing must take place in an open court with the public and the Press has freedom to be there. The rationale behind a public trial is that "the openness of the court is one of the basic safety measures of the right of the individual to an impartial and unbiased effect on the bench, on counsel and showed in camera only if the court may command the hearing to be in privacy is completely important."²⁹⁴ The rule of publicity is meant not at safeguarding the interests of the individual complainants, but to protect the administration of integrity of the judiciary itself. In many countries, the verdict of the court must be given with explanations. A plaintiff cannot arrange for appeal or even choose whether he should or should not appeal if he does not know the reasons for the judge's decision and the reasons therefore can be known through the appellate court.

Most legal organizations of civilized countries recognize that judges are fallible and consequently provide machinery for appeal and review. In some states, it is based on common law; in others, it is based on statutory law. Although formality and procedure are inseparable, in socialist countries, stress is laid on informality of procedure. This means the eradication of needless, harmful formalism that jeopardizes the defense of the parties'

²⁹³. E. Kahn. "Recognition of Native Law and Creation of Native Courts" in Hahlo & Kahn (eds.) *the Union of South Africa: The Development of its Laws and Constitution*. 1960, P.162.

²⁹⁴.. A. O. Obilade. *The Nigerian Legal System*. Ibadan: Spectrum Law Publishing, 1979, P. 32

rights.²⁹⁵ It presumes the conservation of all rational and useful forms of proceedings. Informality aids accessibility to the people.²⁹⁶ There is also a need for the speedy disposition of cases. As Staley puts it, "delayed justice can be equal to denial of justice. The swiftness of justice is therefore a precondition for the effectiveness of judicial defense."

These fundamental principles have developed over a long period of time. They were established to solve problems of injustice within particular societies. In earlier English history, for example, judges held office during the king's preference. The Act of Dispute Resolution may be taken to have recognized the freedom of the judiciary from control or influence of the Crown. It was this act which laid down that judges' commissions that their salaries be fixed and established. They could only be removed upon an address of both houses of parliament.

4.9 Conclusion

An exposition of the above fundamental principles in the administration of justice seems to y a bias in favour of the western approach. The impression may be created that they will be regarded as ideal and any derogation from them will be considered reprehensible. It must, however, be remembered that these principles have developed within particular societies as a creative response to problems in those societies. They undoubtedly were necessitated by other developments in the socio- economic and political spheres.²⁹⁷ They cannot be properly evaluated in isolation. The institution of chieftaincy, which is the subject-matter of this investigation, has grown out of a different society. The principles expounded above are based on the idea of securing the protection of individual liberty.

²⁹⁵. C. K. Meek. *Land Law & Customs in the Colonies*. London: Oxford University Press, 1960, P. 173.

²⁹⁶. Ntloedibe, E.L. "The Role of Traditional Leaders as the Custodians of Culture, Tradition and Land," paper delivered at a workshop on Culture, Religion and fundamental rights. November 1998, pp. 5-11.

²⁹⁷. Ajayi, J.F.A "The Interaction of English and Customary law in Nigeria," *Journal of African Law*, Vol. 4. 1960, pp. 37-44.

Chieftaincy, on the other hand, has developed in a society that mostly emphasized collective interests rather than individual interests. This does not mean that individual interests were entirely neglected, but their recognition and protection had not reached the same level of development as in western societies. Yet the black societies within which the institution of chieftaincy has evolved are not static. The aim therefore is to place chieftaincy under a magnifying glass with the object of determining the compatibility of its operation with the modern society. Western ideas, concepts and values have influenced black people to a greater or lesser extent.²⁹⁸ Failure of the institution of chieftaincy to measure up to these will obviously alienate the society it serves from it. Moreover, the institution of chieftaincy operates in juxtaposition with the western court structure. Appeals from these courts go to magistrates' courts which follow western formal procedures.

Consequently, a conflict arises between the approaches of the two courts. It is therefore essential to find ways of minimizing or eliminating these conflicts. Moreover, although it is quite possible for benevolent and wise chiefs to dispense justice just like the Turkish judge of old, the Cadi, who sat under a palm tree and administered justice according to what he deemed fit, the potential for injustice where there are no safeguards is great. It is therefore imperative that the exercise of the judicial functions by chiefs be performed subject to certain minimum guarantees. It is therefore apposite to analyze models of litigation in traditional and modern industrialized societies. These underpinnings will ensure that some of the socio-economic and political spheres are exposed.

²⁹⁸.Elias, T.O., *The Nature of African Customary Law*. Manchester: Manchester Press, 1956, pp. 171-180.

CHAPTER FIVE

THE NATURE OF OYO AND ZULU CHIEFTAINSHIP

5.1 Introduction

In an attempt to understand the progress of Chieftainship institutions in Oyo and Zululand, it is deemed justifiable to go into the origin of the institution of chieftaincy. Only a retrospective understanding of the society in which the chieftaincy institution grew is needed, this will be followed by British colonial administration influence on native law and the judicial structure of the Oyo and the Zulu.²⁹⁹ The recognition of chiefs, and the ultimate recognition of chieftaincy is closely linked with the recognition of customary law in general so much that it is not likely to detach the two. Yet it is not planned to have an in-depth explanation of the recognition of customary law in Nigeria and South Africa. Only those features which are of significance to acknowledge the role of chiefs will be observed. It is understandable that the whites possessed of a more "developed" culture when they came into contact with the blacks; one would have assumed that they could replace the traditional institutions with the new ones and that these would indisputably be supported. If in any case the idea was that the blacks had no law, but only custom, they could not have imagined the replacement of the traditional institution. Simons asserts that:

*“Despite their technological backwardness, Africans could cope with their environment, and achieved a fair amount of security against famine, disease, disorder and aggression. They had attained a high standard of political and legal organization; observed a strict moral code, and governed themselves with dignity, discipline and self-restraint.”*³⁰⁰

²⁹⁹. Fenrich, J. & Galizzi, P. “The Future of African Customary Law”. University of Cape Town: South Africa, 2012, Pp.72-78.

³⁰⁰. Simons, H.J. African Women: Their Legal Status in South Africa. London: Northwestern University Press, 1968, Pp.220-226.

The native courts are equivalent with similar essential institutions- which made the foundation of the English judicial system. The Anglo-Saxon shire and hundred moots were outdated by the king's courts even though local justice continued to be managed on a common basis which confirmed the administration of justice with the tradition of the people in the society. There were free men courts in the community or their congress, the representatives were the presiding judicial officers. They assembled with a president, and the four judges. These native courts were not operated by experts, but an individual person was his own attorney. There was no device to enforce attendance except by voluntarily.³⁰¹ The hearing of offences of violence and theft constituted the greatest bulk of the business of the courts and civil work was limited. There were also similarities of technique. The courts acknowledged the customs of the people and acted as mediation tribunals in the settlement of neighbours' disputes. Very little change came from within the system for quite a long time until there were outside influences. Traditional judicial system continued for a long time even with the advent of western judicial system, native courts continued to play its judicial function.

5.2 Traditional Judicial Structure of Oyo and the Zulus

Before the advent of white European power, the Oyo-Yoruba had a highly developed organ of government made up of the executive, legislature, and judiciary branches. The *Oba* (monarch), who was the highest authority, was an absolute ruler in practice.³⁰² He was *Kabi o kesi* (who should query his order?): his authority was not to be challenged by any of his subjects. He was considered to be representative of *Olodumare* (God). But in practice, the *Oba* ruled with his cabinet *Igbimo* (Council of Chiefs), without which there was no government, and no executives. There were two types of chiefs: the palace chiefs and the town chiefs (*Igbimo*). Each *Igbimo* member represented a quarter/ward (*Adugbo*) in the

³⁰¹ . Stafford, W.G. & Franklin, E. Principles of Native Law and the Natal Code. Pietermaritzburg: Shuter & Shooter 1956, Pp. 98-102.

³⁰² . Atanda, J.A. The New Oyo Empire: Indirect Rule and Change in Western Nigeria, 1894-1934. London: Longman, 1973, Pp. 145-149.

town. Jointly, and in association with the *Oba*, they developed laws when necessary. Strictly speaking, there was no need to recommend formal laws as deterrents against social behaviour, because everyone accepted tacitly that any departure from the conduct approved by the deities (*Imole*) and the descendants (*Alale*) was illegal. Offiong states that, when rules were propagated by the monarch and his cabinet, the edicts were customarily given a divine consent.³⁰³

Though, the execution of decrees did not rest only on them, it was also the civic obligation of the chiefs of different grades in precise towns and communities to implement laws. In Oyo, Yoruba people regarded Oyo as their political headquarters, where the three organs of government manifested and are clearly demonstrated. In Ile-Ife (the Yoruba considered Ile-Ife the cradle of creation by God according to Adeoye,) for example, *OdomodeIfe* (Ife youths) were the public prosecution officers. They had underground prisons (*gbere*) where they kept offenders awaiting trial or execution. Each Yoruba territory was distributed into hierarchical units, each under the authority of an appropriate chief. The *Oba* and his *council* were the apex rulers. Directly under them was the *Adugbo* (ward), headed by an *Olori-Adugbo* whose nomination was endorsed and approved by the *Oba*.³⁰⁴ Below this level was the *Agbo-Ile* (extended family compound), headed by an *Olori-Ebi* (head of the extended family).

The last division was the individual nuclear family, led by *Baba* (father). The selection of the *Olori-Ebi* was the sole obligation of his extended family members, because the oldest member of the extended family frequently assumed this post. The consent of the *king* was never required in the appointment, and every married man was the head of his own family. Because the family was the basic component of society, it is beneficial to recognise it as the essential unit of the society's administration as well as a judicial unit. In other words,

³⁰³. Offiong, D.A. The functions of the Ekpo society of the Ibibio of Nigeria, *African Studies Review*, 27: 77–92. 1991. *Witchcraft, Sorcery, Magic and Social Order among the Ibibio of Nigeria*. Enugu: Fourth Dimension Publishing, 1984, 194-199.

³⁰⁴. Louis, J.M. Political Representation in The traditional Yoruba kingdoms. *Journal of Historical society of Nigeria*, J.H.S.N Vol. X, No.4 P.21, 1981, Pp.205-212.

legal and political mechanism was exercised mainly via the household and extended kin groups. A typical Oyo-Yoruba family comprised father, the mother, and their children. Each position had been very wisely defined household duties, and each family member played an important part in social control by socialising children and inspiring them to obey to social order and customs. The stratified social system can be demonstrated as follows; king and his council, the quarter/ wardhead, the compound head, the head of family. These are the hierarchy of Oyo-Yoruba Judicial and political structure.³⁰⁵

In the household family setting, the father's statements were final as the head. He settled disputes among his family members and sustained discipline. When there was a dispute, he would settle it or pass it to the *OloriEbi*, depending on the nature and gravity of the issue. The Yoruba operated both segmentary lineage group and centralised kingdom with elaborate administrative and judicial structures. Their sense of the judicial system was not built on Western ideas and principles. By implication, there were neither divisions nor organizations that matched closely with Western judicial systems.³⁰⁶ Kinship empathy was strong, and it controlled behaviour and allowed people to know his or her limits. Internal fighting was not frequent, and they recognised rules guiding conduct. These guidelines were often satisfactorily obeyed for everyone to know what he or she was eligible to, and could assume from other members. Consequently, the ancestry group was a knot of united legal obligation, *vis-à-vis* the advanced legal authority of the empire. Kingship was the bond of union, the need to offer communal safety and justice for large families frequently responsible for the institutional pressure on the solidarity of kinship group. It involved the acceptance of responsibility and obligations to the group to the extent that individuals were seen, mostly, as members of their specific families before they were accepted as members of the society at large.

³⁰⁵ .Eades, I.S. *Changing Cultures: The Yoruba Today*. London: Cambridge University Press, 1980, Pp. 256-260.

³⁰⁶ .Ojo, J.D. The changing role of Traditional Rulers in the Nigerian Political set up. *The Indian Journal of Political Science*, Vol. 34 No. 4, 1982, Pp. 223-228.

The head of extended family ruled over the adjudication of differences among his families. His “court” was an informal one that only dispensed with civil cases connecting members of his extended household. He adjudicated civil cases and sanctioned the guilt either by making it compulsory or simply by making them give a verbal apology, particularly if the person was a teenager or “wife of the family.” The term *oko* (husband) referred to a woman’s husband and all the members of his clan, including female clan members. The term *iyawo* (wife) referred to a man’s wife and all the wives of his clansmen (Daramola & Jeje, Bascom). No one man, therefore, married a wife to himself only. His wife was considered “a wife of the family.” But if there is a confusion concerning a member of the extended family and others outside of it, the case might be transferred to the *Olori Adugbo* for adjudication. However,³⁰⁷ the extended families involved might converge to settle the matter. An appeal from the *Olori-Ebi*’s “court” might also be transferred to the *Olori-Adugbo*’s court. The king recognised the *Olori-Adugbo*’s court, and he enjoyed his approval and support of the king. The *Olori Adugbo* tried all civil matters within his quarter. He handled preliminary proceedings in criminal cases without actually resolving them. Criminal cases were entertained at the king’s court. The idea of classifying cases into either civil or criminal existed among the Oyo-Yoruba, and a criminal was called *odaran*. To be considered *odaran*, one had to commit a terrible offense that could not easily be settled or discharged as trivial. Such cases included murder, crime against government and felony, burglary, accidental or provoked manslaughter, assault, and rape, while civil cases included willful damage of property, quarrel, insult, debt, and other offenses.

In view of the point that the king acknowledged the *Olori Adugbo*’s court and that the latter enjoyed the consent of the king, he could sanction, fine, and even expel the guilt from the ward or even the town after receiving the approval of the *Oba* and his *Igbimo*. The punishment given to a guilty party depended mostly on the offense. Murder is a crime against government, and burglary were normally punished by execution.” Accidental or

³⁰⁷ .Daramola, O. & Jeje, A. *Awon Asaati Orisa Ile Yoruba*. Ibadan: Onibonoje Press, Pp.1967, 243-247.

provoked manslaughter and assault were punished by a fine, for example, and a person guilty of assault could be flogged. Rape, seduction, and adultery were punishable by a fine.³⁰⁸ The main objective of adjudication among the Oyo-Yoruba and some Nigerian ethnics was to reach a decision that would be accepted as fair by both parties, so that the conflict could be resolved. But if a suitable adjudication could not be reached at the ward court appeal could be made to the *Oba*'s court, the apex of the administrative and judicial system.

Looking at the Yoruba language discloses that the term *Oyo-Yoruba* traditional adjudicatory systems known as *Ile Ejo*, or "house of cases" (court), existed in the Oyo-Yoruba precolonial era. There is no society in which laws are promptly and freely obeyed; each town has a means of applying obedience and dealing with offenders. The community in question selects what is lawful and what is not. But there is no complete widespread code of lawfulness. Communities have their lawful principles that cannot and should not be used holistically for an evaluation of another society. What is suitable depends on the culture and cultural philosophies of the people. Every rule a people of a given community accepts as binding is lawful. Absolutely, age had both regard and power. Eades asserts that it was the older people who knew and passed on the ways of the community to the younger ones. This was why mediators were often older people with experience. This was the assembly that made laws for the people. Radcliffe-Brown views the concept of law as follows:

*"The application of direct or indirect penal sanctions...the settlement of disputes and the provision of just satisfaction for injuries."*³⁰⁹

³⁰⁸ . Bascom, W. *The Yoruba of Southwestern Nigeria*. New York: Holt, Rinehart and Winston, 1965, Pp. 45-52.

³⁰⁹ . Radcliffe-Brown, A.R. *Structure and Function in Primitive Society*. Illinois: The Free Press, 1952, Pp.181-184.

It does not follow, consequently, that to have a law a group of people must have courts and judges. Radcliff-Brown, nevertheless, does not give the name ‘law’ to what he considers “regulated vengeance” in which the community/state fights one of its members because the member has injured another member of the society, as in criminal laws. In line with his narrow view of law, Radcliffe-Brown views political organization as:

“That part of the total organization which is concerned with the maintenance of establishment of social order within a territorial framework by the organized exercise of coercive authority through the use, or the possibility of use of physical force. If his assertion is correct, governments nowadays do little more than maintain order.”

The concept of law can be seen as an exact mode of social action, one that is not only distinct from morality, but also irreducible to the idea of social control. Legal reasoning can be distinguished from the processes associated with arbitration and mediation, which could be considered the settlement of disputes of categorizing concepts that define justifiable norms. Custom is indeed the source of law: custom is law itself.³¹⁰

The concept of law can be reflected an inclusive title for all rules of behaviour or, more narrowly, rules imposed by a specific and limiting method. If defining a narrow Western legalistic terms, as acknowledged by a court or as social control via the organized application of force by politically organized society, the existence of law is denied the Yoruba people. This said, they have maintained order through various mechanisms at various levels.³¹¹ May this not be considered a form of law enforcement, especially if we consider Malinowski’s viewpoint.

³¹⁰ . Radcliffe-Brown, A.R. Structure and Function in Primitive Society. Illinois: The Free Press, 1952, Pp.120-122.

³¹¹. Malinowski, B. Concept of Law. Sweden: Springer, 2016, Pp.215-219.

Bottomorein, expressing Malinowski's view, asserted that the so-called native societies of the world were familiar with the rules of law and other norms and traditions such as morals, manners, and rules of craftsmanship. Regarding a number of Nigerian tribes, especially the Ibibio and Igbo, Ofiongviews it that:

*“There is no judicial in the ordinary sense of the laws as deterrents against behaviour that offends collective conscience, because everyone accepts implicitly that departure from the social norms socially ratified by the deities and spirits as well as descendants is likely to incur the displeasure and vengeance of the ancestors. When emergency “laws” are promulgated by the elders’ council, such laws are invariably given a divine sanction.”*³¹²

However, in Oyo-Yoruba, the *Oba* and his council and Ogbonipropagated the laws. If the *Oba* and his council passed judgment, no one dared appeal it. Anyone who did was considered a rebel. The due penalties depended on the nature of the crime. It was the only court that could enforce capital penalty. Cases could be heard in public or tried behind closed doors in the court. The council's sanction was usually based on a real rather than assumed consensus of the community. Nevertheless, a consensus had to be obtained among the adjudicating chiefs. The Oyo-Yoruba were concerned with elements of reconciliation as well as blame. Blame was not dominant. In most Yoruba towns, difficult criminal cases that involved important dignitaries were not tried openly. They were usually passed to the Ogboni or Osugbo cult, Ijagbemi states that decision of the cult was final whether it was approved by the *Oba* or not on state emergency matters.³¹³

³¹² .Ofiong, D.A. The functions of the Ekpo society of the Ibibio of Nigeria. Enugu: African Studies Review, 1984, Pp.45-48.

³¹³ .Ijagbemi, E.A. A note on Temp Kingship in the early 19th Century. In (O. Ikime& S. Osoba, eds.) *Tarikh*, 4(2) United Kingdom: Essex. 1973, Pp. 82-86.

In practice, the *Oba* could arrest, punish, or even impose capital punishment on his subjects without trial. But this power was exercised with caution, and only very sparingly, otherwise it could result in a repercussion. An example of such a case was that of the historical Alaafin Aole and the Baale of Apomu. The Alaafin gave ruling on justification and was himself killed. The *Oba* was expected to pass cases that would attract capital punishment to the Ogboni cult, to which he and his council statutorily belonged. Very little is known about the Ogboni, because all of their arbitrating was done in the secrecy of their *Iledi* (conclave). Only initiated members could be privy to these secrets, and these privileged members never spoken in public about cases. Akere, claims that the subject of “Ogbonism” and the influence it had throughout the Oyo-Yoruba sociocultural world was tremendously significant.³¹⁴ It is important to note, in this aspect, that this research had many difficulties. First, the initiated interviewed were not ready to disclose their secrets to a non-initiated. Some among them said they were restricted by a vow of secrecy not to divulge the information of the cult.

Awolalu & Dopamu, affirmed that the Ogboni were, largely, a political association established for the purpose of upholding law and order in Oyo-Yoruba towns. Its political power was far-reaching. Members met regularly in their *Iledi* to decide civil conflicts, deal with criminal cases, and discuss general matters of interest, that affect well-being of the society at large.³¹⁵ They were also the kingmakers who monitored and curbed the excesses of an *Oba* who might otherwise become tyrannical. Anyebe has noted that the Ogboni constituted the Town Council or the Council of State in the latter part of the 19th century. Its executive body or cabinet consisted of six Ogboni chiefs known as *Iwarefa*.

They comprises the Oluwo, Lisa, Aro, Odofin, Iya-Abiye, and Apena (the secretary of the cult). Consequently, what could be considered a court in Oyo-Yoruba was the *Osugbo* or

³¹⁴Akere, R. *Reformed Ogboni Fraternity (Incorporated)*. Lagos: The Memento, 1984, Pp.88-94.

³¹⁵Awolalu, J.O. & Dopamu, L. *West African Traditional Religion*. Ibadan: Onibonoje Press, 1979, Pp.226-229.

Ogboni council. The Osugbo cult was a fraternity of chiefs and elders that was also the legal arm of government, in Oyo-Yoruba towns, and it commanded the respect and obedience of all.³¹⁶ It had officers, titles, and ordered procedures of investigation and judgment. Some members of the cult served as investigators. They performed functions similar to that of the Western police force.

In the late 19th century, the Ogboni constituted the highest tribunal in Oyo-Yoruba towns. As well as representatives of war leaders, traders' guilds, women's leaders, hunters and the chief Ifa priest, who themselves might be Ogboni members. The king served as the head of the trial process, and ratified their decisions.³¹⁷

Before this court, powerful offenders and, at times, the king himself were tried. Murderers, highway robbers, arsonists, and those who committed crime against government were also tried before this court. "The king's court, which used to have power of life and death, was scrapped in 1908 when the authority over murder charges was removed from the purview of the king's court and transferred to the British resident commissioner. The Ogboni or Osugbo can be observed as having served a number of judicial, religious, and political functions, among others, in Oyo-Yoruba towns.³¹⁸

Although these functions were executed within the secrecy of their conclave, and it functioned as a cult, and in fact, a secret cult, because its memberships and the place and time of meetings were known to all. But non-members could not take part in their deliberations. The *Oba's* court in Oyo-Yoruba had lost much of its powers, which had largely "been passed to the Customary Courts and Local Administrations.³¹⁹ It is important to note that, during those days, the Supreme Courts were like the king's Courts. These days

³¹⁶ Sijuade, O.A. *The resilience of indigenous rituals among women in Ijebuland*. Ph.D. A thesis proposal presented to the Faculty of Arts, University of Ibadan, Ibadan, 2006, Pp.78-83.

³¹⁷ Tamuno, T.N. *The Evolution of the Nigerian Nation State*. London: Longman, 1978, Pp.77-78.

³¹⁸ Tamuno, T.N. *The Evolution of the Nigerian Nation State*. London: Longman, 1978, Pp.75-76.

³¹⁹ Awolalu, J.O. & Dopamu, L. *West African Traditional Religion*. Ibadan: Onibonjo Press, 1979, Pp.227.

Magistrates and District Officers had the power to try murder cases, this power had been withdrawn from the king's court³²⁰

To take over the right of administering justice from the kings and his chiefs, the colonial powers established the Native Court Ordinance of 1914, which initiated hierarchically level grades of courts marked A, B, C, and D in descending order of legal magnitude, as it is in the procedure of the magistrate court today. The uppermost ranks were chaired over by the supreme chiefs or their representatives, while the lesser ones were chaired over by the less significant chiefs, with British Colonial Officers playing leading roles. Nevertheless, the structure of these courts met with quick rejection in many areas. In theory, the native courts were supposed to have a fair measure of freedom and initiative in matters of native administration. In operation, some of the customary courts simply fell to the whims and caprices of the administrative officers. Through the execution of an establishment in the Native Court Ordinance, the Native Authority Ordinance of Lugard's administration conferred administrative and judicial responsibilities upon recognised *Oba* and *Baale*.³²¹ Though, a number of fairly well educated, but undeserving individuals were also given power. These native courts were the models of present-day courts in Nigeria in general and in Oyo-Yoruba in particular.

Tradition provides a standard of rules, but can be departed from. In the area of constitutional law, one often notices that unless strong sanctions have developed for deviant conduct in a particular community, it is possible to violate the rules with impunity. This does not mean that such conduct is lawful. It merely indicates that the sanctions are weak. The chief acquired the knowledge of the laws and customs of his people by instruction by elder men and by attending court sessions during his period of training. If his predecessor lived to the ripe old age, the prospective chief could even be involved in

³²⁰ .Anyebe, A.P. *Ogboni*. Lagos: Sam Lao Publisher, 1989, Pp.109.

³²¹ .Asiwaju, A.I. "Political Motivation & Oral Historical Tradition in Africa: The Case of Yoruba Crowns, 1900-1960" *Africa* 46 No.2: 1976, Pp.113-114.

the decision of cases under the direction of his predecessor. In the absence of writing, laws of the tribe can be recalled through memory. He exercised authority over a variety of crimes and delicts, and the procedure was mostly informal.³²² No strict difference was drawn between crimes and delicts especially in matters of procedure. In the exercise of his judicial roles the chief had no body of police, but made use of his court messengers for summoning or arresting persons for trial, administering punishment and enforcing his decisions. Failure to pay a fine led to confiscation of property, "chiefly cattle, or in the event of resistance, the dispatching of an armed detachment to bring in all the offender's cattle, and if necessary to destroy his family home and kill him. Such great powers, were, however, rarely used as part of the judicial process against him. Except if the chief suspected an intrigue. When King Shaka united the Zulu nation, the various tribes had more or less the same pattern of administration.

The Isilo was, as it were, all in one, minister of justice and chief justice. He was called to resolve difficult cases, and with the help of his councillors, men skilled in law and debate, dispensed justice. This is in comprehensive summary the politico-judicial mechanism which the Zulus had when the whites came into contact with them. This mechanism, judged against the broad background of the blacks, was quite acceptable for the settlement of conflicts in the Zulu society. The advent of whites was to usher in a new period when the native institutions would be subjected to severe tensions because of disputing beliefs.³²³ As is usual, when two cultures meet, members of the two culture groups frequently emphasize differences between the two groups. The useful aspect of institutions is regularly overlooked or undervalued. The traditional institution would undergo the same fate under the white administration.

³²² .Gibson, J.Y. *The Story of the Zulus*. London: Longman, Green & Co, 1911, Pp.75-79.

³²³ .Bryant, A.T. *Olden Times in Zululand and Natal*. Cape Town: Struik Publishers, 1965, Pp.142-147.

5.3 Recognition of Chieftainship between Oyo and Zulu.

The British colonial administration of Oyo Yoruba towns between 1891 and 1914 went through three stages. From 1891-1897, when the territory was under colonial administration, local administration was synonymous with para-military rule under British officers. By 1897 the region was considerably pacified and the colonial administration ordered the establishment of Council of traditional chiefs with the British travelling Commissioners as president.³²⁴ The numbers of traditional chiefs in the councils was fewer than in the traditional setting and the presiding role of the Oba was now taken over by the colonial government.

In 1901, the Native Council ordinance was introduced and more provincial, district, town and village councils were founded. The new ordinance increased the powers of the Oba, who replaced the travelling commissioner as the president of the council. Lastly, the ordinance decentralized responsibilities in favour of the chiefs who were given enormous powers to deal with the matters within their jurisdiction in order to check any challenge to colonial regime. These included the Alaafin of Oyo, Ooni of Ife, Alake of Abeokuta, the Osemawe of Ondo and the Awujale of Ijebu- Ode. On the other hand, as far back as 1903, the Colonial Government had shown recognition to Ooni as the custodian of traditions of the Oyo-Yoruba people by asking him to arbitrate in matters involving the use of beaded crowns by some Obas in the South-West.³²⁵

In 1914, Lugard as Governor-General was aware of the amazing success of the indirect rule experiment in the northern emirate. Hoping to make Oyo-Yoruba chiefs achieve the same feat for British Colonial Administration. Indirect rule was in fact, a continuation of the policy previously embarked upon by Macgregor, except that he pursued it with greater

³²⁴ .Vaughan, O. *Indigenous Political Structures and Governance in Nigeria*, Ibadan: Bookcraft Ltd, 2004, Pp.45-48.

³²⁵ .Crowther, M. & Ikimi, O. *West African Chiefs: Their Changing Status under Colonial Rule and Independence*. New York: Africana Publishing Corporation, and Ile-Ife: University of Ife Press, Pp. 88-94.

vigour and even recorded some innovations in important areas. In particular, in 1914-1930, the function of each component Native Authority was clearly defined. Actually, the period within 1914-1930 marked an era of supremacy for paramount chiefs, who even wielded more power than they ever had in the traditional setting. This represents one aspect of the disruption of traditional power configuration in Oyo Yoruba towns by British Colonial system.³²⁶

Above all, the policy of enhancing the prestige or status of chiefs as a pre-requisite to the effective performance of indirect rule was more strongly promoted in Oyo than in any other part of Yorubaland. The colonial authorities increasingly improved the position of the Alaafin in the pantheon of Yoruba Traditional rulers. Other sole Native Authorities in the period 1914-1931 included the Awujale, for the Ijebu Province and the Alake for the Egba division of Abeokuta Province.

The attribute of the native administration was over centralization of power which led to eventual reorganization of the 1930s and 1940s. As a result, Oyo-Yoruba Province was split into five independent native authorities and five subordinate ones, the Ondo province was split into twenty-eight independent native authorities and the chiefs ceased to function as sole native authorities but as Chief-in-Council (later Chiefs and Council) assisted by advisory councils consisting mainly of titled chiefs and members elected at village meetings. In 1952, the whole concept of Indirect Rule was swept aside when the local government law of 1952 ushered in the era of democratically elected local councils. This situation continued until independence and after. The Richards and later McPherson Constitutions of 1946 and 1951 respectively brought about changes to traditional rule by creating a House of Chiefs and greater role for the chiefs.³²⁷ However the crises between the AG government and Oyo led to the deposition of Alaafin in 1954 while the Ooni of Ife,

³²⁶.Afigbo, A.E. *The Warrant Chiefs: Indirect Rule in Southern Nigeria, 1891-1929*, London: Longman, 1971, Pp.55-62.

³²⁷.Ojo, J.D. The changing role of Traditional Rulers in the Nigerian Political set up. *The Indian Journal of Political Science*, Vol. 34 No. 4, 1982, Pp102-106.

the Oba of Benin and the Olu of Warri enjoyed favour. In the First Republic, the position of Ooni of Ife was elevated to conform to universal Yoruba tradition. He thus became the most powerful traditional ruler in the old Western Region, which was under the Action Group. Eventually, Ooni became a Governor when the region became self-governing, a situation that lasted until the end of First Republic.

The Action Group crisis in the zone led to its break up and the takeover of the government by the Nigerian National Democratic Party (NNDP), even though people were unhappy with Oba for being loyal to the government of the day. The unsettled situation in the West does appear as part of the reason for military takeover in 1966. Indeed, the military regime between 1967 and 1972 removed prison service, police and area courts from the jurisdiction of traditional rulers. This unique act virtually edged out traditional rulers from any active political and administrative roles in their respective communities. It eroded the most important outward manifestation of their authority. Furthermore, the 1976 local government reform and the 1978 Land Use Decree greatly affected the powers of traditional rulers, even though the military government stated that it was not its intention to destroy the organic unity of our traditional institutions and society's but their functions must change according to "the present day stances."³²⁸

The local native administration became democratically elected bodies and traditional rulers were removed from the mainstream of Local Governments and Traditional Councils were created. The former consisted of the elected members, while the latter were merely advisory and honourary. Then the political Bureau, which in March, 1987 collated and analyzed the views of people regarding the traditional rulers recommended, among other things, that the traditional rulers should be restrained to the local government areas of their respective communities and they should not be granted legislative, executive, or judicial functions. Like in the other geopolitical zones, the number of first class chiefs in the South-West increased significantly over the past decades and now counts over royal

³²⁸.Aborisade, O. Local Government & Traditional Rulers in Nigeria. Ile-Ife: University of Ife Press, 1985, Pp.180-186.

fathers. Around independence, the number was less than one hundred. Because Yoruba never united themselves in a single political system, ranking are subjected to confusion and rules for succession vary.³²⁹

Though the number of traditional rulers is large, only a few in each region are able to project authority outside their local government area, such as the Alaafin of Oyo, Ooni of Ife, the Alake of Egba, the Awujale of Ijebuland and the Oba of Lagos. The Alaafin and Ooni for instance enjoy higher rating. Nevertheless, the traditional insistence on tracing a direct line to Oduduwa has broken down recent years. Obas in the larger and more economically developed towns and in state capitals often claim a greater status than those who have a more direct lineage to Oduduwa in some states of the South-West. However, today, in most states of the zone, the Obas operated without conflict with governments, which supervised their functions.

It is understandable that the traditional institution had to be acknowledged by the early colonizers, if justice in African community had to be done.³³⁰ Yet the acknowledgement of chieftaincy, which colonial administration had previously ignored, was not innate of a need to do justice according to law of the blacks. It was rather required by a desire for real administration of the black peoples. Owing to the lack of financial and manpower resources, it was deemed advisable to make use of the system of indirect rule. In the British colonial belief, this method of respecting traditional institutions was popularized and systematized in the writings of Lord Lugard and Sir Donald Cameron and the policy of indirect rule which they promoted was applied in territories such as Nigeria and Tanganyika as at then. This policy spread throughout Anglophone Africa. According to this system, institutions which the blacks had evolved themselves were modified for

³²⁹ . Lloyd, P.C. *The Political Development of Yoruba Kingdoms in the 18th and 19th Centuries*. Royal Anthropological Institute of Great Britain and Ireland: London, 1971, Pp.164-167.

³³⁰ . Welsh, D. *The Roots of Segregation: Native policy in Colonial Natal, 1845-1910*. New York: Oxford University Press, 1971, Pp.194-197.

purposes of local government so that the black peoples might develop in a constitutional way from their own past, steered and controlled by the traditions and customs which they had inherited from their progenitor, (they are moulded or modified as they might be on the advice of British officers) and by the general advice and control of those officers.³³¹

Natives' courts were recognised by the British administration and became the lowest courts in the judicial structure. The approach which was current at the time which was derived from social anthropologists was that of romanticising the tribal life unpolluted by western civilization and of eulogizing the virtues of traditional institutions. Though earlier administrators had seen the practical benefit of using indigenous institutions to help them with their limited resources of funds and personnel to administer the territories, to their successors, these institutions had in themselves an inherent value.³³² To them the indigenous institutions were the only desirable vehicles through which the development of the black people might be effected. As Rubin states that:

“Free from distorting intrusions of western culture, they provided the means through which genuine African attitudes towards society and government might be expressed. No longer did the administration's image of the ideal African lie in the eager aspirant to western culture, mission-educated, assiduously making his blameless way up the ladder of clerical employment, with his regular devotion at this local church and his house impeccably furnished in the taste of the lower middle class of Victorian England. The ideal was now the traditional chief or elder who (provided of course, that he was co-operative with the administration and conformed to

³³¹ .Kahn, E. "Recognition of Native Law and Creation of Native Courts" in Hahlo, H.R. & Kahn, E. (eds.) The Union of South Africa: The Development of its Laws and Constitution 1960, Pp.78-82.

³³².Rubin, "Customary Family in Southern Africa: Its Place and Scope" in Anderson (ed.) Family Law in Asia and Africa, 1968, Pp. 225-228.

its standards of efficiency) dispensed fair but firm whose primary for their affection people, his who, both justice to his interests were consideration, and part, felt for him and respect.”

The native court was a traditional institution which virtually and positively affected the lives of the whole black population, because the highest bulk of litigation took place in this court under unwritten customary law. It was felt that this institution should be retained although on the other hand needs to be reformed and developed to meet the contemporary needs of the people and of the administration. Where chiefs did not exist, they were created.³³³ Instead of their being traditional rulers, they became public servants subject to the control of the white administration and received salaries from the government. They were used not only as judicial officers, but also as native administrators. In the course of time, these courts were supposed to develop from simple customary tribunals into systematized courts of justice, with written records, court officials, and a practice closely modelled on that prevailing in the magistrates' courts, though in a simpler form. France, Portugal and Spain on the other hand, followed a policy of progressive assimilation. Their policy was in essence that if customary law was ignored, it would gradually disappear. Yet, after an initial period of theoretical assimilation, the French colonies moved slowly towards this objective. Adaptations were made to suit prevalent needs. Large parts of customary law and Islamic law were retained for the benefit of the African populations.³³⁴

The outcome was the establishment of a dual legal system "not too dissimilar from that which the British, starting from entirely different colonies in Africa ... (a)the person in charge for executing the system of black administration was Sir Theophilus Shepstone, the Diplomatic Agent. In accepting this structure of using traditional leaders, a system which was in dispute with the prevailing colonial policy to Africans, Shepstone predated Lord

³³³. Whitfield, G.M. South African Native Law. Cape Town: Juta, 1948, Pp.235-238.

³³⁴. Bennett, T.W. Application of Customary Law in Southern Africa. SALJ Vol. 8 Issue 3, Pp. 39, 1985.

Lugard's policy of indirect rule by many years. Shepstone used this policy despite opposition especially from Cloete, Recorder of the District Court.³³⁵ In Cloete's opinions, the use of native chiefs would delay the "improvement" of Africans. Moreover, he believed that, chiefs being recognised, would "set up their own sovereignty in direct resistance to that of the Government and the respect of the government would subsequently suffer. Chieftaincy became a vibrant part of the administrative structure which Shepstone planned. The use of traditional chiefs was not caused by Shepstone's admiration for these leaders. It was a pragmatic step necessitated by the lack of manpower and the financial involvement, and disruption of tribes a "great portion of the Zulu people had no hereditary chiefs."³³⁶

Where hereditary chiefs could not be found, commoners were appointed. Both categories of chiefs were supposed to maintain law and order among their people, but their powers were carefully circumscribed. In 1850, the Lieutenant-Governor of Natal was declared supreme chief of the African population of the colony. In this capacity, he replaced courts. The Zulu monarch in hearing appeals from chiefs', the use of chiefs was more acceptable to the colonists in Natal than in the Cape Colony because tribal organization had been pulverized, and then refurbished through Shepstone's efforts. Because many chiefs were commoners appointed to the office by Shepstone, this made them more loyal to the government. Moreover, in comparison with some of the tribes on the eastern frontier of the Cape, the Natal tribes were small. But Shepstone's use of chiefs was not necessarily for the welfare of the Africans. Although he did this indirectly, it was more for effective control of the African population in favour of the white government. In an appendix to the Natal

³³⁵Koyana, D.S. "Traditional Courts in South Africa in the Twenty-first Century" in Fenrich J, Galizzi P and Higgins TE (eds) *The Future of African Customary Law*, Cambridge University Press, New York, 2011, Pp.272-176.

³³⁶.Cloete, J. A. *The Administration of Justice*. Pretoria: Van Schaik Publishers, 2012, Pp.252-257.

Native Commission of 1881-2, there were one hundred and two tribes' under the charge of "one hundred and seventy three chiefs or headmen in KwaZulu-Natal.³³⁷

All of these chiefs were hereditary, forty-six(46) were appointed and twenty-eight (28) were headmen appointed and recognized by the government. These had the same powers as chiefs. The proliferation of chiefs has later been criticized by chief Buthelezi in the following words: "Shepstone in one of his generous moods even gave chieftainship to some of the boys who groomed his horses". He states that:

"We represent the basis for the traditional indigenous government of our people. As a people we were conquered and through that conquest we and our institutions could not hope to emerge unscathed when Africa was conquered by imperialists during the last century they seized our institutions, distorted them-and used them to serve their own ends. That is the reason why we have such a large number of chiefs today. There are families who have chiefs for several generations, and there are others who are creations of our conquerors. We have no intention of holding witch-hunts to point out which ones of the African potentates gathered here today fall under which category. In spite of his views on the influence of hereditary chiefs, Shepstone intended them to be gradually eliminated. In terms of Ordinance 3 of 1849 minor judicial powers had been left in the hands of chiefs."

They could adjudicate in all civil matters between blacks and in criminal matters "of a minornature" involving blacks. Because of their utility in administration, the Natal government attempted to maintain the prestige of the chiefs by allowing them to retain

³³⁷.Welsh, D. The Roots of Segregation: Native policy in Colonial Natal, 1845-1910. New York: Oxford University Press, 1971, Pp. 153-157.

judicial powers. Shepstone saw the power of a chief in judicial matters as "a proper and harmless jurisdiction (by which) the dignity of the Chief is saved from any rude shock; native ideas of right in such matters are very much guided by their own peculiar customs and habits, and none are better able to understand these than the Chiefs." The magistrate could rectify any "manifest injustice of any custom", by, hearing appeals from chiefs' courts.³³⁸ Chiefs were empowered to summon any of their subjects to appear before them. Refusal to obey the summons was punishable by a fine. If a person was charged with a criminal offence, the chief could send his messenger to bring him, and if he repelled, he could be an attempt by chief to boost his prestige and punish the criminal according to the custom and tradition of the people in the native court. Magistrates were instructed not to hear civil suits between Africans unless the parties had first taken the suit before the chief's court.

This step was known to many magistrates although Shepstone had earlier doubted the wisdom of paying chiefs salaries, as this might confirm in the minds of their subjects that they were petty functionaries of the government and thereby lower their prestige, it was later decided that they be paid because they had lost their traditional sources of income. The policy of using chiefs in the administration of justice among blacks was continued even after the departure of Shepstone. Some of their judicial powers were limited. Their criminal jurisdiction was taken away from them in 1875. The Native Administration Law of 1875 was meant at least by some of its framers at slowly eliminating the authorities of chiefs and to change them with white administrators. Criticism was often articulated of the worth of justice administered by chiefs. Chiefs feel aggrieved of the loss of judicial powers they had suffered in 1875 and agitated to have them restored. Chiefs often exceeded their jurisdiction. It was felt necessary that the 1875 prohibition on chiefs' criminal jurisdiction

³³⁸.Kerr, A. J. The native law of succession in South Africa with special reference to the Nguni tribes of the Ciskeian and Transkeian territories and Natal. London: Butterworth, 1961, Pp.92-98.

be more publicized.³³⁹ In 1895, a magistrate intimated that chiefs were jealous of their judicial functions and were resentful to review of their decisions by higher courts. He also noted that some persisted in exceeding their powers by trying criminal cases and then taking the fines for themselves. Chiefs were also accused of bribery, nepotism and of administering arbitrary justice. Many similar accusations were made by magistrates and some magistrates recommended that they be deprived of all their judicial functions.

There is no doubt that traditional leaders had been corrupt and this led to the withdrawing of its legitimacy within the black community. Yet the official procedure of preserving it stayed unchanged. Chiefs symbolized for the KwaZulu- Natal government, the old order which they were anxious to keep. The administration, like the traditional chiefs, was antagonistic to any breakdown of ethnic society and that social change would unavoidably bring about presumed lawlessness, demoralisation and a questioning of the colonial administration.³⁴⁰ To avoid this, the answer was seen as lying in giving more authority to the chiefs so that they could efficiently control their subject.

But in spite of this brave effort, the actual use of the chiefs to the administration was on the decline. An effort was even made to introduce western education to the chiefs so that this could assist them in smooth running of native administration and their subjects should not be left out too. Proposals were made for the establishment of four schools for the sons of chiefs and headmen where they would be taught matters of government and ordinary local laws, and how to conduct themselves towards the government, and those over whom they may have control. This, however, never materialized. To the elite class, the chief's lack of education and the entrenchment of traditionalism which they stood for proved

³³⁹. Rubin, L. "The Adaptation of Customary Family Law in South Africa" in Kuper & Kuper (eds) South African Law Journal: Vol. 410, Adaptation and Development 1965, Pp. 196-201.

³⁴⁰. Stafford, W.G. & Franklin, E. Principles of Native Law and the Natal Code. Pietermaritzburg: Shuter & Shooter 1956, Pp. 238-243.

rather irksome.³⁴¹ Despite its shortcomings, the KwaZulu-Natal example of using traditional chiefs in the native administration of justice among the black people of this area did serve a purpose, and it was this pattern which had to be followed among the Black people of South Africa in 1927 when uniform recognition was granted to customary law and the traditional chiefs; this policy ended the conflicting policies which had spread the act in the several provinces.

It was in 1927 that the traditional institution was accorded uniform recognition in the whole of South Africa. The belief had gained ground that blacks knew customary law better than Europeans and it was therefore advisable to leave the task in their hands.³⁴² The law to be applied was customary law in civil disputes between blacks. It was felt that the power of chiefs had been unnecessarily broken down and not left to gradual growth which kept pace with the development of the blacks. This breakdown of the power of chiefs has been regarded as premature and this was in marked contrast to the then High Commission of Territories like Basutoland Swaziland. Such a view was regarded by General Smuts as being misguided and short sighted. But the recognition extended to chieftaincy was partial and the lower courts were not recognised. This partial recognition has been criticized.

The recognition of chieftaincy on the other hand was criticized by some "as being equivalent to setting up 'anthropologicalzoosjust as the wild-life was preserved in game-reserves, so the traditional institutions were artificially preserved in the 'native reserves'"...Others did not condemn it outright.³⁴³ According to the Native Representative Council: "Our system of Native administration must not therefore be regarded as a kind of procrustean bed into which all Africans must fit, whatever the facts of the situation."

³⁴¹. Fenrich, J. &Galizzi, P. "The Future of African Customary Law". University of Cape Town: South Africa, 2012, Pp.46-48.

³⁴².Myburgh, A.C. Law and Justice In The Bantu-speaking Peoples of Southern Africa. London: Routledge & Kegan Paul, 1974, Pp.66-69.

³⁴³ .Rogers, Native Administration in the Union of South Africa, 1949, Pp.232-236.

Although the committee conceded that it was desirable to apply customary law and recognize the chiefs' courts in appropriate circumstances, in other respects, it did not accept the system of separate courts for blacks because this judicial segregation violated the principle of equality before the law, implied that African life was static whereas in fact it was gradually becoming integrated with the general life of the country, and it bolstered up the restrictive laws differentially affecting the blacks. Furthermore, the system of separate courts, had given blacks the impression that they were receiving a different kind of justice.³⁴⁴ The attitude of the black to the institution of chieftainship is particularly important because it demonstrates the level of acceptance of this institution. An attitude of suspicion against the institution of chieftainship has been caused by its use and perversion by the white establishment. This attitude has remained even though chiefs are no longer controlled by the white government. Even some of the criticism against chiefs stems from this. Chieftainship/chieftaincy is often perceived as not meeting the needs of today.

5.4 Conclusion

The chiefs play vital roles in the administration of justice at the grassroots level in Oyo and Zulu traditional administrative structures, the colonial administration indisputably cajoled many blacks and it pleased the white administration.³⁴⁵ There is no doubt that ethnocentric prejudice militated against the use of native institutions as they were perceived as being primitive. But on the other hand, it would be more in accord with the instructions of justice to be aware of the chiefs because they appreciated the system of values which triumphed within the black community. Justice in any event eventually rests on the values of a particular society. These values are often a product of the historical development of a particular people. It is however clear that KwaZulu-Natal's policy of recognising chiefs was not inspired by a wish to see that justice was done in the black community. It was

³⁴⁴Holleman, J.F. "The Recognition of Bantu Law in South Africa" SALJ Vol. 43, 1955, Pp.53-56.

³⁴⁵ .Wilson, M.H. & Thompson, L.M. The Oxford History of South Africa: South Africa to 1870-1966, New York: Oxford University Press, 1969, Pp.262-266.

more of the benefit of the colonial administration. Traditional institution was used as an actual control measure over the impatient black population and there was also shortage of personnel and financial resources.

Disobedience to the traditional chiefs in the administration of justice may also be caused by the imposition on the customary law of highly organized legal systems developed in a completely different environment, motivated by different objectives, adopting procedures at variance with those of African law, and backed up by a different administrative system, military and police forces of the colonizing powers.³⁴⁶ Whatever the shortcomings of the system of indirect rule, and here the critic's of political philosophy plays a major role, historically, the policy of indirect rule is evidence that not every colonial power has automatically assumed his colonies, to be superior and fit for speedy and total compliance in his conquered territories, and explains in part the existence of African native institutions in the cotemporary period.

³⁴⁶ .Lugard, F. The Dual Mandate in Tropical Africa. London: Frank Class, 1965, Pp.55-59.

CHAPTER SIX

DATA PRESENTATION AND ANALYSIS

6.1. Introduction

This chapter presents the study findings derived from two questionnaires and the interview schedule. The questionnaires were administered to the professional historians, palace officials, and the knowledgeable elderly people on the study. The interview was administered to the Amakhosi, Baale, Izinduna, and the Oyomesi or the traditional chiefs in Oyo, Western Nigeria and kwaZulu-Natal in South Africa. The information obtained from the respondents was collated, coded and analyzed using descriptive statistics and the Statistical Package for Social Sciences (SPSS) version 17. A significance level of $p=0.05$ was used for all hypotheses tested.³⁴⁷ Findings of the survey are presented using tables with frequencies and percentages, pie charts and bar charts. In addition, data collected using an interview schedule was analyzed using thematic analysis.

The chapter is divided into themes based on the research objectives as follows: (i) The accessibility of traditional courts processes in Oyo and Zulu judicial structures. (ii) Do the traditional courts have fair Procedural process in Oyo and Zulu empires? (iii) Examining foreign influence on Oyo and Zulu traditional administrative systems. (iv) To explore justice dispensation in Oyo and Zulu traditional administrative systems. (v) To analyze the doctrine of separation of power and its effects on Oyo and Zulu traditional administrative systems.

A total of 20 traditional chiefs, 20 palace officials, and 20 professional historians and 20 elderly knowledgeable people on the study all participated in the survey. 16 chiefs were duly interviewed in Oyo while 18 were interviewed in Zulu, 14 palace officials properly completed their questionnaires in Oyo and 11 in Zulu, 15 and 14 professional historians

³⁴⁷ J. C. Welman. S. J. Kruger & B. Mitchel. Research Methodology. Cape Town: Oxford University Press, 2005, pp. 138.

duly completed their questionnaires in Oyo and Zulu respectively, 17 and 15 elderly knowledgeable people on the study correctly completed their questionnaires, in Oyo and Zulu respectively.³⁴⁸ 77.05% respondents returned the questionnaires in Oyo, while 66.67% of the respondents returned the questionnaires in Zulu. Giving a response rate of 70.00% and 55.00% of palace officials in Oyo and Zulu, 75.00% and 70.00% of the professional historians in Oyo and Zulu, and 85.00% and 75.00% of the knowledgeable elderly people in Oyo and Zulu, the Amakhosi, Baale, Izinduna and Oyomesi who were key informants for the interviews 14 chiefs were interviewed in both empires giving a response rate of 70%. Babbie and Mouton are of the opinion that some related studies consider the response rate of 50% as suitable, 60% as good and 70% and above as a very good analysis of reporting findings. In view of the fact that there is no statistical base for an adequate response rate to the questionnaire, 70.83% for this study was considered to be very good.³⁴⁹

The high response rate was as a result of the support of the offices of the Cooperative Government and Traditional Affairs (COGTA) in KwaZulu-Natal, South Africa and Oyo State Ministry of Local Government and Chieftaincy Affairs in Nigeria. They were responsible for introducing the researcher to the traditional chiefs with the help of research assistants. By following up each respondent in the completion of the survey they achieved this by informing all other respondents to complete and return the questionnaires. The ethical clearance was issued by the University of Zululand Research Ethical Committee of the research office headed by the University Deputy Vice Chancellor for research and innovation.³⁵⁰ The ethical clearance enabled the researcher to access information from the respondents. In addition to the letter from the Departments requesting respondents to complete the questionnaire, the initial survey period was extended to enable more respondents to participate in the survey and to provide ample time to complete and return the questionnaires. The researcher had to personally do the follow up to ensure that the

³⁴⁸ M. Q. Patton: *Qualitative Research and evaluation Methods*. London: Sage Publication. 2002, p. 182.

³⁴⁹ D.A. Ritchie: *Doing Oral History: A Practical Guide*. Oxford: Oxford University Press. 2003, p. 148.

³⁵⁰ F. Struwig & G. Stead: *Planning, Designing and Reporting Research*. Cape Town: Pearson Educational, 2001, p. 187.

questionnaires were completed. The results are presented below, using both descriptive and inferential statistics.

6.2 Respondents' Demographic Profile

This section provides a summary of the demographic distribution information of the respondents in Oyo and Zulu empires. The demographic information included issues such as name of University, Faculty/Department, Province or State, area of residence, sex, name, age, academic qualification, occupation and marital status. The demographic data about the respondents are presented in Tables 5-8 and Figures 6-12.

6.2.1 Distribution of Respondents (Chiefs, Palace Officials, Professional Historians, and Knowledgeable elderly people on the study) by empires.

Data collected was collated, analyzed to determine the distribution of respondents in the two empires. ³⁵¹The results are presented in Figures 6.

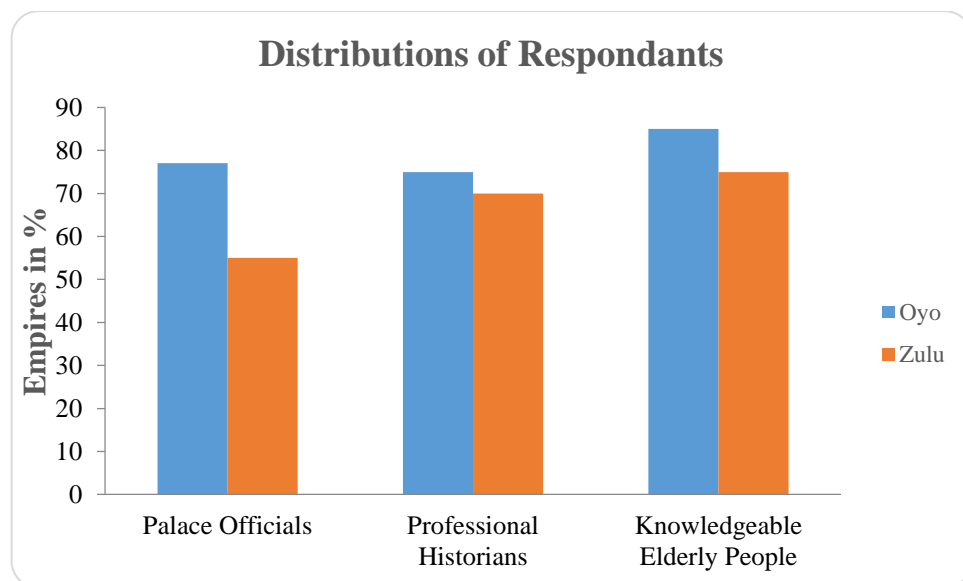


Figure 6: Distribution of respondents in Oyo and Zulu

Distribution of respondents on the basis their areas in Oyo and Zulu in figure 6 showed that

³⁵¹ J.C. Welman. S.J. Kruger & B. Mitchell: Research Methodology. Cape Town: Oxford University Press, 2005, p, 119.

75.50% and 55.00% were the palace official, 75.00% and 70.00% were the professional historians while 85.00% and 75.00% were for the knowledgeable people on the study from both empires.³⁵²

6.2.2 Distribution of Respondents According to their Occupation in Oyo and Zulu

Data collected were also analyzed to determine the distribution of occupations based on their areas. The results are presented in Table 6a.

Occupations	Oyo (N=45)		Zulu (N=40)		Total (85)	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Skilled Workers	29	64.44	25	62.05	54	63.53
Unskilled workers	13	28.89	13	28.89	26	30.59
Others	03	06.67	02	05.00	05	05.88
Total	45	100.00	40	100.00	85	100.00

Note: N=85 is the total number of usable completed questionnaires out of 120 copies of questionnaires administered in Oyo and Zulu empires.

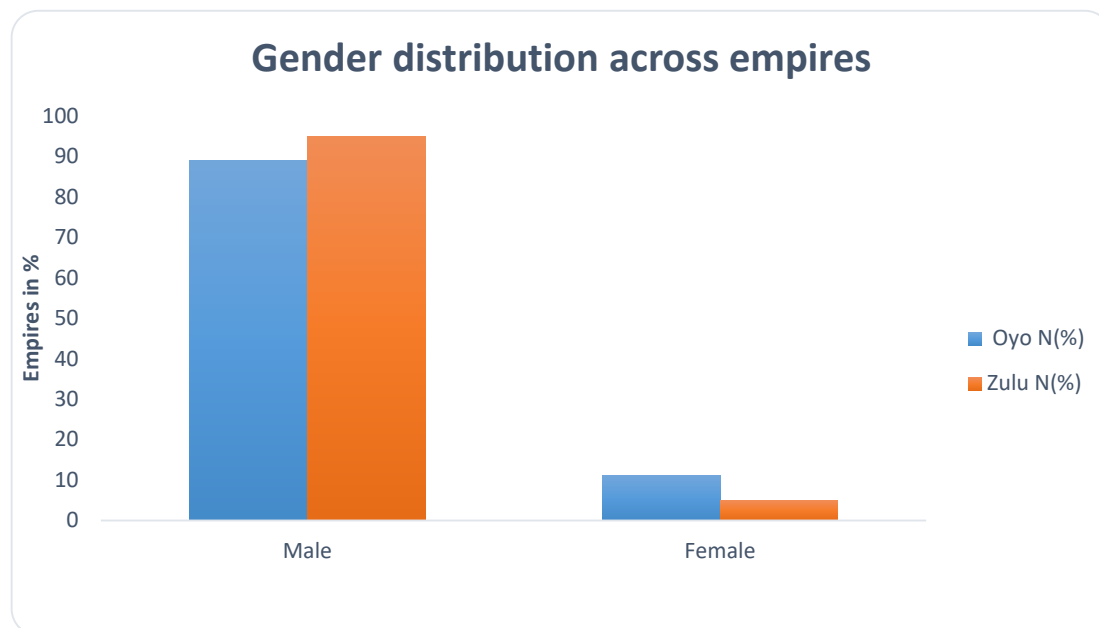
The results in Table 6 depict the occupation of the respondents. The majority of respondents in Oyo and Zulu were 85, Skilled workers were (64.44%) in Oyo and Zulu represented (62.05%). Meaning majority of the people that responded to questionnaires were educated and skilled workers³⁵³. The unskilled workers were 28.89% in Oyo and 28.89% were represented in Zulu. Others represented the retirees, house wives and aged people; in Oyo they were 06.67% while in Zulu they represented 05.00% of the respondents. The results correspond with those from the separate analysis of data collected from respondents from the two empires which indicated that the respondents were mostly

³⁵² L. Burton: Survey Research: Choice of Instrument, Sample. Bloomberg: Johns Hopkins University, 2007, p. 116.

³⁵³ F. Struwig. & G. Stead: Planning, Designing and Reporting Research. Pearson Educational. Cape Town, 2001. P. 146

skilled workers from Oyo, Western Nigeria and Zulu people from KwaZulu-Natal Province in South Africa.³⁵⁴

6.2.3 Distribution of Respondents according to their Gender



From Figure 9, results showed that of the 85 academic respondents, 88.89% were male in Oyo, while 95% were male in Zulu.³⁵⁵ Similarly, the results also showed that 11.11% of respondents were female in Oyo while 5.0% were female in Zulu. The results indicated the dominance of males over females in the surveyed in both empires.³⁵⁶

6.2.4 Distribution of Respondents (in Oyo and Zulu) by Age

The respondents were asked to indicate their age range on the questionnaire.

Table 2: Show the distribution of respondents' age both in Oyo and Zulu respectively

Age group	Oyo N (45)	Zulu N (40)	Total N (85)
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³⁵⁴ M. schratz. & R. Walker: Research Social Change: New Oportunities for Qualitative research. London: Routledge, 1995, p. 138.

³⁵⁵ C.r. Kothari: Research Methodology: Methods and Techniques. New Delhi: Age International Publisher, 2004, p. 152.

³⁵⁶ A. S. De Vos: Research at Grass Root. Pretoria: 3rd VanSchaik, 2005, p. 138.

		Frequency	Percent	Frequency	Percent	Frequency	Percent
40	60	22	48.89	23	57.50	27	31.76
61	80	15	33.33	12	30.00	45	52.95
81 Years Above		08	17.78	05	12.50	13	15.29
Total		45	100.00	40	100.00	85	100.00

85 is the total number of usable completed questionnaires out of 120 copies of questionnaires administered to palace officials, professional historians and knowledgeable people in the two empires.

The distribution of respondents shown in Table 5 indicated that 33.33% of respondents were within the age bracket 40-60 years in Oyo, while in Zulu they were 30%, between 61-80 years, 48.89% were 61-80 years above, while in Zulu they were 57.50%, between 81 years and above in Oyo were 17.78% while in Zulu they represented 15.29%.³⁵⁷ The highest population, (48.89% and 57.50%) of the respondents were in the age range of 61-80 years and the least (17.78% and 15.29%) in Oyo and Zulu were in the category of 81 years and above. Results further revealed that there were more respondents (40-60 years) in Oyo and Zulu.³⁵⁸

5.2.5 Distribution of Respondents (in Oyo and Zulu) by Educational Qualification

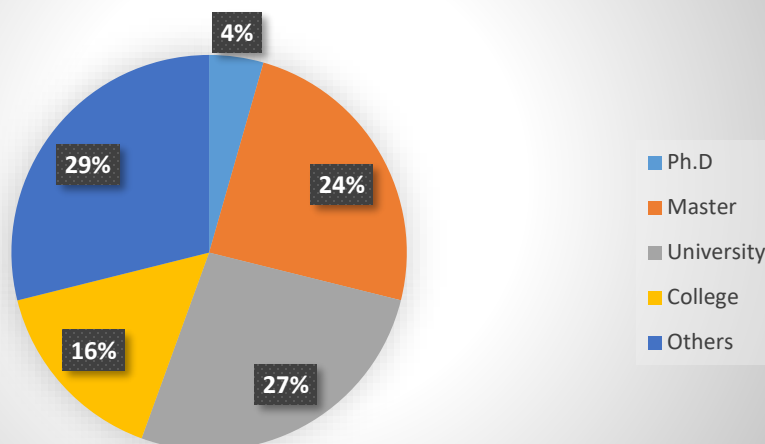
The study also sought to know the status of respondents by their educational qualifications as presented in Figure 6 respectively.

³⁵⁷ P. D. Leedy. & J. E.: Ormrod. Practical research: Planning and Design Pearson Education: Boston, 2010. P. 213.

³⁵⁸ D. Silverman: Qualitative Research: Theory, Methods and Practice (2nd edn). London Sage Publication, 2004, p. 93.

QUALIFICATIONS OF RESPONDENTS

OYO (%)



The educational qualification of the respondents in Oyo and Zulu showed that 4.44% and 2.5% of them had Doctoral degrees, while in Oyo and Zulu 24.44% and 10.00% Masters Degrees, also in Oyo and Zulu 26.67% and 20.00% had degrees, in Oyo and Zulu, the percentage of the college respondents in Oyo were 15.56% while in Zulu were 33.00%, others were 28.89% in Oyo and 35.00% in Zulu These results showed that the majority of respondents in both empires were uneducated knowledgeable elderly people on the study.³⁵⁹

6.3 Findings Based on Research Questions

This section presents the results of survey conducted to determine the perception of people on justice dispensation in Oyo and Zulu traditional administrative structures.

Table 3: Public Perception of the Customary Court process in Oyo and Zulu Judicial Structures

Customary courts processes	Oyo (N=5)		Zulu (N=40)		Total (N=85)	
	Frequency	Percent	Frequency	Percent	Frequency	Percent

³⁵⁹ C. Bertram. & I. Christiansen: Understanding research: an introduction to Reading Research. Van Schaik Publisher: Cape Town, 2015, p. 118.

in Oyo and Zulu						
Tracing the origin of Oyo and Zulu can give us background knowledge to their judicial Processes	42	93.33	38	95.00	80	94.11
The courts processes start with the litigant, the culprit, and the summon letter from the courts constables.	45	100	40	100	85	100
Hearing date must be fixed for both parties	45	100	40	100	85	100
The judges (President) chiefs (Judges), litigants, culprits, courts officials, and the official's witnesses must be in Attendance	45	100	40	100	85	100

before the hearing of the case.						
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Note: N=85 is the total number of usable completed questionnaires out of 120 copies of questionnaires administered in Oyo and Zulu empires.

The table 6 showed the public perception of the respondents on customary courts processes in justice dispensation is very significant in judicial administration. The overwhelming majority of respondents agreed that tracing the origin of Oyo and Zulu will give us background knowledge of the judicial processes. 93.33% and 94.11% of the respondents in Oyo and Zulu attest to this, while 6.27% and 5.89% disagree.³⁶⁰ The other items on customary courts process revealed that 100% of the respondents in both empires were in support of other courts processes, while (100%) of the respondents in Oyo and (100%) of the respondents in Zulu supported that hearing date must be fixed and the last items says the chiefs, litigants, culprits, courts officials and the official witnesses must be in attendance before the hearing session will start in Oyo, (100%) of the respondents supported this while in Zulu (100%) of the respondents strongly supported it. The analyses revealed that there were due processes in Oyo and Zulu customary courts.³⁶¹

Table: 4 Public Perception on Customary Litigation Process among Oyo Zulu Judicial Structures

Public Perception on Customary Litigation Processes among Oyo and Zulu Judicial Structures	Oyo (N=45)		Zulu (N=40)		Total (N=85)	
	Frequency	Percent	Frequency	Percent	Frequency	Percent

³⁶⁰ Confidential interview of Chief Lamidi Oyewole, The Samu of Oyo, 70 years, business, Samu compound Oyo, held on 10th June, 2017.

³⁶¹ Confidential interview of Dlame, M. Indune, 48years, civil servant, held on 7th September, 2017. Matheni traditional court, Nongma, South Africa.

There are fair processes in customary courts litigation	40	88.89	37	92.50	77	90.58
Customary courts have jurisdiction in Oyo and Zulu	38	84.44	35	87.50	73	85.88
Litigants and culprits are given fair hearing in litigation processes	41	91.11	36	90.00	77	90.58
Accusatory processes in Oyo and Zulu traditional courts are duly followed	35	87.50	32	80.00	67	78.82
Chiefs are sincere with the litigation processes.	42	93.33	38	95.00	80	94.11

Note: N=85 is the total number of usable completed questionnaires out of 120 copies of questionnaires administered to respondents in two empires.

Result shown in table 4 indicated that the highest response 93.44% and 95.00% came from those who supported that traditional chiefs were sincere with the litigation process in both empires, the next were 88.89% and 92.50% those who supported the fair processes in customary courts litigation in Oyo and Zulu, while 91.11 and 90.00% in Oyo and Zulu strongly supported that Litigants and culprits are given fair hearing in litigation processes,³⁶² the total percentage for both were 90.58%, followed by the jurisdiction of customary courts in both empires, 84.44% in Oyo 87.50% and in Zulu 80.00%, which constitute the majority that supported customary courts jurisdiction on criminal and civil

³⁶² Confidential interview of Chief Yusuff, Ayoola. The Bashorun of Oyo, 73 years, business, Bashorun Oyo, held on 7th June, 2017.

cases. The result of the table above indicated that there were fair processes in customary litigation process in both empires based on the public perception of the respondents.³⁶³

Table: 5 Public Awareness of European Contact on Traditional Administrative Structures in Oyo and Zulu Empires

Public Awareness on Foreign influence on traditional administrative structures.	Oyo (N=45)		Zulu (N=40)		Total (N=85)	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Foreign contact have negative effect on traditional administration	43	95.56	38	95.00	81.	95.29
European contact have effect on judicial administration	38	84.44	34	85.00	72.	84.70
Western culture really have effect on our culture	44	97.78	40	100	84	98.82

³⁶³ Confidential interview of Buthelezi, L.M. Induna, 58years, civil servant, held on 7th September, 2017. Matheni traditional court, Nongoma, South Africa.

Note: N=85 is the total number of usable completed questionnaires out of 120 copies of questionnaires administered to respondents in the two empires.

Results presented in Table 5 indicated that 97.78% and 100.00% of the respondents in Oyo and Zulu agreed that westernisation have effect on their culture³⁶⁴, followed by 95.56% and 95.00% respondents in Oyo and Zulu supported that Foreign influence have negative effect on traditional administration,³⁶⁵ lastly 84.44% and 85.00% of the respondents also agreed that European contact has effect on judicial administration in both Oyo and Zulu, the table above clearly showed that majority of the respondents agreed that foreign contact has negative influence on the traditional administration of both empires.³⁶⁶

Table: 6 To examine Justice Dispensation in Oyo and Zulu Traditional Administrative systems

Inquiry into Justice Dispensation in Oyo and Zulu Traditional Administrative systems	Oyo (N=45)		Zulu (N=40)		Total (N=85)	
	Frequency	Percent	frequency	Percent	Frequency	Percent
Customary court is the hope of common people.	42	93.33	38	95.00	80.00	94.11
There is fair process in	40	88.89	37	92.50	77	90.58

³⁶⁴ Confidential interview of Inkosi Eugene Bhokintintu Zulu, Mandlakazi Traditional Council, 65 years, held on 6th September, 2017 Nongoma, KwaZulu-Natal, South Africa.

³⁶⁵ Confidential interview of Chief Bello Odudele. The Laguna of Oyo, 85 years, farming, laguna Compound Agunpopo Oyo, held on 13th June, 2017.

³⁶⁶ Confidential interview of Khoza, B. Induna, 73 years, farming, Mandlakazi Nonogoma, 6th September, 2017.

appointment of the judges in Oyo and Zulu customary courts.						
Dispensation of justice in Oyo and Zulu is based on merit.	41	91.11	38	95.00	79	92.94
King can remove customary court judge	10	22.22	20	50.00	30	35.29
Customary courts verdict are respected	38	84.44	36	90.00	74	87.06

Note: N=85 is the total number of usable completed questionnaires out of 120 copies of questionnaires administered to respondents in the two empires.

Table: 6 Showed that 93.33% in Oyo and 95.00% in Zulu which constitute the majority of the respondents in Oyo and Zulu believed that customary courts is the hope of common people.³⁶⁷Next were 91.11% and 95.00% of the respondents in Oyo and Zulu believe that there is fair process in dispensation of justice in customary courts,while 88.89% and 92.50% in Oyo and Zulu supported that there is fair process in appointing the judges in both customary courts, followed by 84.44% and 90.00% of the respondents in both empires agreed that customary courts verdicts are respected, but in Oyo 22.22% agreed that king cannot remove the customary court judge which constitute the minority and in Zulu 50.00% agreed that king can remove the customary court judge.³⁶⁸

³⁶⁷ Confidential interview of jimoh, A. Judge Akesan customary Court Oyo, 72 years, Retiree, held at Akesan Court on 20th June, 2017.

³⁶⁸ Confidential interview of Mngomezulu, M.J. Induna, 59 years, farming, held on 6th September, 2017. Mandlakazi traditional court, Nongoma, South Africa.

Table: 7 Public Perception on Doctrine of Separation of Power in Oyo and Zulu

Public Perception on Doctrine of Separation of Power in Oyo and Zulu	Oyo (N=45)		Zulu (N=40)		Total (N=85)	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Separation of power exist in Oyo and Zulu administrative systems	43	95.55	36	90.00	79	92.94
The head of traditional administration is king	44	97.77	38	95.00	82	96.47
Delegation of judicial duties and other important decisions can be done by king.	40	88.88	35	87.50	75	88.23

Table: 7 revealed that majority of the respondents strongly agreed that there is separation of power in the traditional administration of Oyo and Zulu, they were of the opinion that

the king alone cannot be everywhere.³⁶⁹ He must delegate functions for the smooth running of the administration. The table explained further the percentages of the respondents that strongly supported that the head of traditional administration is king, in Oyo 97.77% and Zulu 95.00, followed by separation of power exists in Oyo with 95.00% while in Zulu 92.94%, also most of the respondents agreed that delegation of judicial duties and other important decisions must be done by the king, in Oyo 88.88% and in Zulu 88.23% of the respondents supported it, meaning that separation of power was overwhelmingly supported by the respondents³⁷⁰.

6.4. Interview Report

As indicated in Chapter Five of the study, a combination of methods was used to collect data. Though the quantitative method was prevalent, the qualitative method was used as a complementary method to illuminate the quantitative findings. The interview schedule that was administered is presented as Appendix 3. The respondents who were reached for the interview were traditional chiefs, palace officials, professional historians, and knowledgeable people on the study Province in South Africa. The results of the interview are reported under the themes below.

6.4.1 Perception of Respondents on the Customary Court process in Oyo and Zulu Judicial Structures

Responses from the interview showed that the operational systems of customary courts in Oyo and Zulu were similar, there is bureaucratic system in customary courts administration in both sides, the courts operation in Oyo is within the King or (Oba) traditional chiefs, the Oyo Mesi, and Baale whose one of the members is president, the

³⁶⁹ Confidential interview of Chief, M.O. Ogunmola, The Otun of Oyo, 93 years, Retire, Akeetan Oyo, held on 15th June, 2017.

³⁷⁰ Confidential interview of Ngema, M. Induna, 68 years, civil servant, held on 7th September, 2017. Matheni traditional court, Nongoma, South Africa.

courts clerk, ³⁷¹court constable, the litigants, culprit, and their witnesses, while in Zulu courts the system evolved around the Inkosi, the council or the Isiduna, committees, and the community, the accuser, defender, and the official witnesses. ³⁷²The interviewed people revealed that the courts systems in both Oyo and Zulu were similar to each other and the traditional chiefs of both empires played active role in the courts processes.

6.4.2 Respondents Awareness on Customary Litigation Process among Oyo / Zulu Judicial Structures

The interview revealed that the litigation systems of customary courts in Oyo and Zulu were similar. The litigant have to file in his or her case through the courts clerk and the court constable will take the summon letter of the case to the culprit, there is bureaucratic system in customary courts administration of both sides, in Oyo among the traditional chief, there is a president who serves as the court judge and other chiefs serve as lawyers, before hearing will take place the court clerk will call all the cases to be heard for the day, the litigant and the culprit will be given Bible and or Quran to swear that they will say nothing but the truth and if they were traditional worshipers, they will do same with their god or what they believe in and their witnesses, before representing their views to the courts.

6.4.3 Public Awareness on Foreign Influence on Traditional Administrative Structures in Oyo and Zulu Empires

The interview responses from the traditional chiefs in Oyo and Zulu revealed that European contact had negative effect on traditional administration and also reflected on our culture in Africa.³⁷³This is shown on the moral decadence of our youth, modes of dressing, neglect of African religious practice and it also has a great impact on traditional

³⁷¹ Confidential interview of Chief Ajiboye, G. The Ashipa of Oyo now Oloja of Ago Oja, 75 years, business, Isale Oyo, held on 15th June, 2017.

³⁷² Confidential interview of Mbatha, V.M. induna, 49 years, civil servant, held on 7th September, 2017. Matheni traditional court, Nongoma, South Africa.

³⁷³ Confidential interview of Oladele, A. President Ashipa customary Court Oyo, 73 years, Retiree, held at Ashipa Court on 18th June, 2017.

judicial systems of both empires, these affect the mode of punishment of the guilty. However traditional judicial systems are trying to embrace some aspects of modern court in their traditional judicial procedures.³⁷⁴

6.4.4 To examine Justice Dispensation in Oyo and Zulu Traditional Administrative systems

The respondents indicated that traditional chiefs are fair in justice dispensation in Oyo and Zulu; they also attest that justice pronouncement was the responsibility of all the chiefs in court.³⁷⁵ The hearing of both parties must be heard carefully; before the final verdict, the chiefs will go on recess for a few minutes to discuss the case before them, and they must all agree on the verdict. The interview also revealed that there was a provision for the appeal in both empires, if the guilty person didn't accept the verdict for a reason best known to him or her, he or she can decide to go to magistrate to file an appeal. The respondents made the researcher to understand that there were jurisdiction in customary court to adjudicate on criminal and civil law.

6.4.5 Public Perception on Doctrine of Separation of Power in Oyo and Zulu

Findings from the respondents showed that separation of power exists in both empires, but there was a slight difference from that of Oyo, the Alaafin, Oyo mesi, Ogboni, Iwefa, and Ilari in the administration of Oyo.³⁷⁶ The Oyo mesi and Ogboni society performed important function and acted as limitations on the powers of the Alaafin, the interview revealed that administration and delegation of duties were done through the Iwefas and the Ilaris. Furthermore the findings revealed that the purpose of separation of power in Zulu

³⁷⁴ Confidential interview of Mthethwa, S.J. induna, 56 years, farming, held on 6th September, 2017. Mandlakazi traditional court, Nongoma, South Africa.

³⁷⁵ Confidential interview of chief Yusuff, Ayoola. The Bashorun of Oyo, 73 years, business, Bashorun Oyo held on 7th June, 2017.

³⁷⁶ Confidential interview of Mogwaza, J.J. Induna, 47 years, farming, held on 7th September, 2017. Matheni traditional court, Nongoma, South Africa.

traditional administrative structures were for the smooth and effective running of the administration, since the king cannot do everything alone, he had to delegate functions to the traditional chiefs, isiduna, committees, communities, and the councillors. They were assisting the king in daily administration of their areas.³⁷⁷

6.5 Conclusion

This chapter presented the interview responses by the two traditional chiefs in Oyo and Zulu. The interviews were conducted in order to validate the data gathered from the questionnaire. The chiefs were asked to provide insights on justice dispensation in Oyo and Zulu traditional courts. These questions were not included in the questionnaires, it was revealed that chiefs were the main actors in justice delivery in the customary courts in Oyo and Zulu and they were fair in pronouncement of the court verdict because of the processes that were involved.³⁷⁸ The interview also found out that the customary courts were accessible to the people in rural areas and the processes involved were not expensive compared to modern courts. The study also revealed that department of justice of both countries should try to upgrade the traditional chiefs of both countries by providing workshop and retraining programme for the chiefs, looking into their welfare package and the customary courts verdict should be respected like the modern courts.

³⁷⁷ Confidential interview of chief, Asimiyu Tijani the Agbaakin of Oyo, 68 years, farming, Agbaakin compound Oyo, held on 7th June, 2017.

³⁷⁸ Confidential interview of Mngomezulu, M.J. Induna, 59 years, farming, held on 6th September, 2017. Mandlakazi traditional court, Nongoma, South Africa.

CHAPTER SEVEN

FINDINGS, INTERPRETATION AND EVALUATION OF JUSTICES DISPENSATION IN OYO AND ZULU TRADITIONAL ADMINISTRATIVE STRUCTURES

7.1 Introduction

This chapter interprets and discusses the findings of the study that were analysed and presented in Chapter Six. The study sought to investigate Comparative Study of justice dispensation in Oyo Western Nigeria and Zulu, KwaZulu-Natal in South Africa. The respondents were palace officials, professional historians and knowledgeable people on the study. The study addressed the research objectives. Bryman describe interpretation of the results as the process of assigning meaning to data suggesting that data might not be understood unless meanings are assigned to them. Interpretation is influenced by the researcher's initiative and perception of the subject matter and the opinion of other like-minded researchers.³⁷⁹ De Vos emphasised that in interpreting data, the results of a given study are related with those of other studies. This aids the establishment of some theories and also supports research continuity. The interpretation and discussion of findings in this chapter are organized around themes of research objectives and broader issues around the research problem.³⁸⁰

The discussion is based on the objectives of the study as stated in Chapter one. These objectives include:

1. To examine the courts process in Oyo and Zulu Traditional judicial processes
2. To explain the litigation processes among Oyo and Zulu traditional courts;
3. To examine European influence on Oyo and Zulu traditional administrative systems;

³⁷⁹ . Bryman, A. Social Research Methods (2nd ed.) London: Oxford University Press, 2004, P.118.

³⁸⁰ A.S.De Vos, A.S. Research at Grass Root. Pretoria: 3rd Van Schaik, 2005, P.198.

4. To investigate justice dispensation in Oyo and Zulu in Oyo and Zulu traditional administrative systems; and,
5. To analyse the doctrine of separation of power and its effects on Oyo and Zulu traditional administrative structures.

7.2. Distribution of respondents by gender in Oyo and Zulu Empires

The respondents consisted of traditional chiefs, palace officials, professional historians, and knowledgeable people on the study in Oyo, western part of Nigeria and Zulu people in KwaZulu- Natal province, South Africa. 62 respondents (77.50%) from Oyo and 57 respondents (71.25%) participated from the Zulu respondents. The frequency distribution reveals that, males constituted the majority of respondents from the two empires, the high number of respondents in Oyo may be attributed to the fact that the Oyo had higher palace officials who responded to questionnaires compared with the Zulu tribal court officials who know little but only directed the researcher to the traditional chiefs. Questionnaires were administered to respondents in the two empires.

The frequency distribution reveals that, males constituted the majority of respondents from the two empires (88.89%) compared to females (11.11%), while in Zulu (95.00%) compared to female (5.00%). The dominance of male respondents is frequently reported in literature especially by Johnson and Gluckman.³⁸¹ Evidence from the study suggests that there were more male traditional chiefs than female. Blaine observes that males' preference for traditional chiefs in Africa was stronger than females. That was the reason while most customary courts in Africa, especially in Oyo and Zulu are being administered by male traditional chiefs.

In Nigeria and South Africa, Atanda, Biobaku, Bleeker, Binns, Bryant, and Lloyd write on laws, customs and administration in Oyo and Zulu. Their studies revealed how the

³⁸¹ S. Johnson. A history of the Yoruba's. Great Britain: Love & Brydone Printers Limited, Thetford Norfolk, 1921, Pp.152-154.

administration of the two empires involved men mostly. They always ensure that there were peaceful co-existence and mutual understanding among the people under their administration.³⁸² Bleeker points out that Zulu kraal organisation and its composition which consists of many families who are related by blood, and the most senior men in the kraal would be the kraal head and he must come from the ancestral male line, and the same goes to the clan system which was the basic political system in pre- colonial traditional administration in Zulu Empire.³⁸³

Atanda gives information on various types of Yoruba administrative structures and operations. This was based on centralized system, and explains the functions of the king, chiefs and expected behaviour from the people.³⁸⁴ He shed more light on the Oyo political administration structures, the functions of Oyo-mesi, the Ogboni and the Alaafin, how this organ served as a check to others, in African Culture and tradition the administration of justice and community administration is more of men's duties, while women play supportive roles in family issues.

7.3 Distribution of Respondents (Oyo and Zulu) by Age, Educational Qualification

The findings revealed that most respondents in Oyo were 22 (48.89%) aged 40-60 years while 61-80, 15 (33.30%) while 81years above were 08 (17.78%) and in Zulu, 23 (57.50%) were aged 40-60 years, while 61-80, 12 (30.00%) 81 years above 05, (12.50%). The majority of the respondents were skilled workers, 2 (4.00%) had PhDs while only 8 (24%) had Master's Degrees, 16 (27.00%) University Degrees, 05 (16.00%), had College Diploma or Certificate and 13 (29.00%) were not educated. While in Zulu, 1 (2.00%) had Ph.D, 04 (10.00%) had Masters Degrees, 08 (20.00%) with University Degrees, 11

³⁸² .Atanda, J.A. *An Introduction to Yoruba History*. Ibadan, Ibadan University Press, 1980, Pp.28-32.

³⁸³ S.Bleeker. *The Zulu South Africa*. Great Britain: Dobson Books Limited, 1971, P138.

³⁸⁴ J,A, Atanda The Changing Status of the Alaafin of Oyo under Colonial Rule, In Crowder, Micheal, and Ikime,O.(eds). *West African Chiefs*, Vol1, (2), Pp52-55 United Kingdom Group Ltd, 1970.Pp.28-40.

(33.00%) had College Diploma or Certificate, 16 (35.00%) were not educated. It can be inferred from the findings that majority of the respondents were educated and working class people from the respondents surveyed (especially 40-60 years) among them were PhD holders. This finding on academics corroborates what Adewoye, Bekker, Koyana, Obilade, and Olaoba attest to that education is very important in the administration of justice in the native court. Awolowo often subscribed to court clerk thus:

*“The native court clerk is a most dangerous element in this judicial system. He often misleads the illiterate judges as well as the administrative officer who comes to review the proceedings recorded by him. To the judges, he pretends to be educated and toknow the law whereas he is far from being educated.....He takes down statements of litigants and their witnesses in English. His grammar is bad, his idiom is worse, and his translation is too literal to convey the true meaning purported by those who make statements in the vernacular”.*³⁸⁵

Awolowo’s observations above were not only about the courts’ insufficiency and static nature, the judges and the clerks were illiterates; these were the disparity between the English legal system and indigenous judicial system. Presently most of the courts clerks are educated including some of the traditional chiefs in the native courts.

This study revealed the respondents’ educational qualifications, majority of them were skilled workers or professional historians out of whom three of them were Ph.D holders in academic. 22 (48.89%) and in Zulu 23 (57.50%) were aged 40-60 years and 61-80 years were 15, (33.33%) in Oyo while in Zulu12, (30.00%) also 81 years above 8, (17.78%) in Oyo and 5 (15.29%) in Zulu. In addition, most of the educated respondents responded well to the questionnaires. It can also be inferred from the findings that most knowledgeable

³⁸⁵ O . Awolowo. *Path to Nigerian Freedom*. London:Faber, 196, P. 188.

people from the study were elderly ones between 81 years and above, despite their age they were still very vast in the jurisprudence history of their people.

7.4 Public Perception of the Customary Court Process in Oyo and Zulu Judicial Structure

The survey of the findings revealed that tracing the origin of Oyo and Zulu can give us background knowledge to their judicial Processes, this corroborated the view of the majority of the respondents in Oyo and Zulu. Obilade and Olaoba supported the customary court processes as the first step towards fair proceedings, which involved the arbitrators and the disputants, the court clerks and their official witnesses.³⁸⁶ The communal involvement make it so interesting, the process must be fair to disputants before the proceedings will take place. In Oyo the traditional chiefs have a major role to play in the court processes, because they have been designated as presiding officers who have sworn to always say the truth.³⁸⁷

The interview findings also revealed the role of traditional chiefs in customary court processes to validate the views of Fadipe and Ojo that chiefs' roles are so germane in the administration of customary courts, since they are the custodians of people's traditions, customs and norms which is very significant in customary court adjudication.³⁸⁸ The natural rule must be adhered to according to the nature of dispute being investigated in the native court, and their witnesses must present their views under a conducive atmosphere. Court decision must be considered impartial by the disputants and must be accepted by both parties so that the dispute could be resolved. The main objective of the native courts

³⁸⁶ A. Obilade. *The Nigeria Legal System*. London: Sweet and Maxwell, 1979, P.78.

³⁸⁷ O.B. Olaoba. "Ancestral Focus and the Process of Conflict Resolution in Traditional African Society." In Albert, I.O. (ed.) *Perspectives on Peace and conflict studies Programme*, 2005. P.208.

³⁸⁸ N.A. Fadipe. *The Sociology of the Yoruba*. Ibadan: University Press, 1970, P.168.

processes is to maintain peace and harmony and resolve conflict according to the norms of the society.³⁸⁹

The interviews finding revealed that procedural nature of customary courts in Zulu is simple, flexible and expeditious. Bennett and Koyana see procedural informality of African traditional courts has been held out as a major advantage over the western-style courts which sometimes get bogged down in technicalities. The procedure allows for the parties to present their cases and have their witnesses give their versions of events. After each party or witness has made statement, the chief or Inkosi, Iziduna, committee and community can question them. Even members of the public (adult males) are allowed to question the parties and the witnesses and to express opinions. This informality makes these courts user-friendly and public participation makes the process popular in the sense of regarding it as their own and not something imposed from above.³⁹⁰

Oliver and Oomen corroborated the findings in their study that proper customary court processes will help in court proceedings and in the court verdict, since it will be acceptable to the disputants based on the fair hearings and the truth.³⁹¹ Traditional justice affirms the values of customary law and is deeply rooted in the principles of restorative justice and reconciliation. As such, traditional courts are an indispensable part of the administration of justice in South Africa. Although they are not recognised as forming part of the formal courts, they occupy an important space in the administration of justice in rural areas, where a huge percentage of the population of people is located.³⁹²

Another findings of the study revealed that customary law is without doubt the oldest system of law in most African societies. The study affirms the submission of Cappelletti

³⁸⁹ G.J.A. Ojo, *Yoruba Palaces*. London: University of London Press, 1966, P.146.

³⁹⁰ D.S. Koyana, D.S. *The Judicial Process in Customary Courts*. Transkei: University of Transkei, 1983, P.208.

³⁹¹ B.Oomen, *Chiefs in South Africa*. New York: UKZN Press and Palgrave, 2005, Pp. 128-130.

³⁹² N.J.J. Olivier, *Indigenous Law*. Durban: Butterworths, 1995, P 118.

and Elias that these societies were communal, with their traditional chiefs and kings as the leaders. The administration of justice within these societies lay in the hands of the traditional leaders; indigenous judicial system in Africa was borne out of kingship institution³⁹³. This entails that one of the significant characteristics of the African kingship institution are the native judicial system. The concept of law can be seen as a specific mode of social action, one that is not only distinct from morality, but also irreducible to the idea of social control. Legal reasoning can be distinguished from the processes associated with arbitration and mediation, which could be considered the settlement of disputes of categorizing concepts that define justifiable norms. Customs and traditions are indeed the source of African law: custom is law itself.³⁹⁴

In addition, the study also finds out that there is correlation between conflict resolution in pre-colonial Africa and during colonial regime in Africa, Koyana affirms that in both periods the traditional chiefs were saddled with justice administration in Africa and they played active role in customary courts practices. Furthermore, the essence of conflict resolution in traditional African societies consist of removing the root-causes of the dispute; resolve the conflicting parties sincerely; to preserve and ensure harmony, and make everyone partaking in resolving conflict happy and friendly with each other again, and this involved saying the truth; to set the right milieu for societal development; to promote good governance, law and order, to provide security of lives and property and to achieve collective well-being of African society. If Africans have to put ‘the falling apart’ together, her original values must be reconsidered.³⁹⁵

³⁹³ M. Cappelletti, Mauro. *Toward Equal Justice: A Comparative Study of Legal aid in Modern Societies* New York: Dobbs Ferry, 1975, P 235.

³⁹⁴ T.O. Elias, *The Nature of African Customary Law* in Cotran, E. & Rubin, N.N.(eds). *Readings in African Law*. New York: Africana Publishing Corporation, 1970, P.245.

³⁹⁵ D.S.Koyana, "Traditional Courts in South Africa in the Twenty-first Century" in Fenrich J, Galizzi P and Higgins TE (eds) *The Future of African Customary Law*, Cambridge University Press, New York, 2011, P211.

7.5 Respondents Awareness on Customary Litigation Process among Oyo Zulu Judicial Structures

The findings of the interview revealed that litigation processes in African customary courts were similar to each other. Olaoba, Obilade and Kayode corroborate the view of respondents that litigation approach, in Oyo and Zulu are similar to each other except in an area of making oath before the presentation; in Oyo they do make oath while in Zulu they don't. Before litigation process between the disputants the elders will explore all peaceful means of conflict resolution through alternative dispute resolution to broker peace between two parties, if all efforts to bring peace fail, then the plaintiff can be advised to go to court.³⁹⁶ Ajibola and Bennett validated the interview respondents that the procedural nature of Oyo and Zulu litigation systems are similar to each other, litigation processes begin from the plaintiff who files a case against the defendant in customary court, and this application will be received by the clerk of the court. Once the application is received, summons has to be issued by the clerk of the court, which is served. Service of court summons is undertaken by the bailiff. The bailiff will deliver the document to the defendant. There are prescribed forms of service that are permitted by law, the date of proceedings must be fixed in the summon letter.³⁹⁷

The plaintiff and the defendant then heed the summon, the court clerk calls the case, and the chief requests the plaintiff to identify himself, before the commencement of proceedings the disputant will make an oath to the court according to their religion that

³⁹⁶ O Kayode, *Judicial Administration in a Changing Society- Customary Courts in Western Nigeria*. *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America*, Vol. 8, No. 3/4 URL: <http://www.jstor.org/stable/43108480> Accessed: 25-04-2017, 1975, P 189.

³⁹⁷ J.O. Ajibola, *Administration of Justice in the Customary Courts of Yoruba land*. Ibadan: University Press, 1982, P 134.

they will say nothing but the truth relating to the case presented in court, then the proceedings begins. Since there is no legal representation in customary courts, the chief will ask if the plaintiff has other evidences to support the claim.³⁹⁸ Then the defendant presents his own case (defence) to the court and allowed to present his witnesses and submit any additional evidences; the chiefs will ask both parties questions and their witnesses too. The adjudicator's comments might be contributions of facts or questions to establish facts. They will be given the opportunity of saying their last statement, the chiefs will go on recess for some minutes, to deliberate on disputant statement, and when they resume, the president of the court will deliver the judgment. Judgment must be fair and acceptable to both parties.

Adam and Williams were of the opinion that litigation processes in the customary court are very simple and must be fair to the parties. Peaceful coexistence and cohabitation was the watchword of the dispute resolution, and the case presented in the court depends on their jurisdiction. The court can adjudicate on both criminal and civil cases, but not all the criminal cases. If the criminal case happened to be a serious one, they can only hear the preliminary and transfer the case to magistrate court for full legal proceedings.

Elias and Key corroborated the view of respondents that by tracing the background history of customary court in Oyo-Yoruba, that Colonial rule did not effectively start in the present area called western states of Nigeria until 1893 when the then colonial authority in Lagos annexed Egbaland and signed similar truces with Alaafin of Oyo and Ibadan chiefs. Prior to this, the supreme court of Lagos had been established in 1876 as a superior court of record with all the jurisdiction and powers vested in Her Majesty's high court of Justice in England, the law to be administered by it being called as the common law, the doctrines of equity, and the edicts of general application which were enforced in England on July 24,

³⁹⁸E. Cotran. & Rubin, N.N. *Readings in African Law*. New York: Africana Publishing Corporation, 1970, P218.

1874, so far as applicable.³⁹⁹ "This was brought into the Supreme Court Ordinance was the acceptance of its significance and validity of "native" customs and rules as these controlled social relations and transactions among the indigenous population. There was the provision, however, that such customs or rules to be so bestowed recognition must not be offensive to normal justice, fairness and good integrity.

All over Africa, the legal function of chiefs was perceived as part of their function as tribal leaders. Colonial administration thought that the combination of administration and judicial powers in the same individual would obey to traditional African ideas of leadership. In addition, the lack of bureaucracies and easy proceedings were regarded as striking features of native' courts besides arbitrating suits in a manner familiar to the African litigants. Although the chief was at the lowest of the ladder of the government offices, his position was an important one. As agent of the state, the chief had to carry out the orders and strategy while he was still the traditional leader of his people. The ultimate effect of the state edict for the chiefs, this was to weaken their respect and to weaken the basis of the traditional order. Before colonial powers, most chiefs had governed with the support of their subject. The native check on the misuse of authority was removed when the chiefs' position came to rest on government financial aid.⁴⁰⁰

Vorster validated his views to support that respondents litigation processes in customary courts were duly recognised, of The *Black Administration Edict* of section 20 chiefs, and in communities without chiefs, headmen were also authorised to try offences at native courts as well as civil crimes other than those identified in the third Agenda of the edict. These native courts can only hear cases involving African people. They could also not levy

³⁹⁹T.O.Elias. *The Nature of African Customary Law*. London: Manchester University Press, 1956, p. 110.

⁴⁰⁰T.W. Bennett. *The Application of Customary Law in Southern Africa: The Conflict of Personal Laws*. Cape Town: Juta, 1991. Pp. 328-333.

penalty relating death or injury. Appeal lies with the native magistrate's court.⁴⁰¹ In terms of section 12 of the Adict chiefs were sanctioned to hear civil cases arising from customary law brought before them by African neighbour in their area of influence. Chiefs were not authorised to decide any irrelevance question, divorce or separation arising out of a civil marriage. Appeal lies to the Magistrate's court. It should be noted that *The Black Administration Edict* refers to customary courts. The customary courts are those of native courts without communities and do not refer to the customary courts of ward chiefs and headmen. The latter officials were not recognised by thirperformance as constituting courts. These officials continued to adjudicate in the native way between members of their societies.⁴⁰²

Bennett and Mqeke assert, the guidelines of process and proof to be shadowed in the customary courts are of native act, to corroborate the view of respondents that the litigation process is an informal process requiring disputants and their eyewitnesses attending the proceeding. It implies that a defaulting verdict was not recognised. Disputants are helped by relations ever since legal counsel were not used, disputants are permitted to present their case without delaying and are question to cross-investigation by all persons available in court, indicating an investigative method. Hearings are steered verbally and no written document is preserved, even though a fleeting record of the case is necessary this day.

The findings revealed that not singleproof is exempted in value since the customary courts evaluate all evidence on quality to attest to respondents' view on the litigation process in customary courts. Mqeke was of the opinion that the whole procedure is focused concerning availability, simplicity and settlement of the disputants within the

⁴⁰¹ J.A Cloete. *The Administration of Justice*. Pretoria: Van Schaik Publishers, 2012, P. 189.

⁴⁰² I. P. Vorster. *Indigenous Law: Study Guide II for IHRJOO-N*. Durban: Butterworth, 1993. Pp.180-185.

society in general. It's an irrational method as it wouldn't be likely to decide whether a burden is lawfully apply if the case is not booked on appeal.⁴⁰³ If the chief's document unclear as to which entitlement was and to what the litigant was stating, the respondent must not be apprehended to what might be understood as an admittance and in the interest of fairness, the case would be heard. If a case was booked for appeal to a Magistrate court, and if it seemed that the native act ought to have been applied, the Magistrate would have to start hearings again in magistrare court, and the key verdict would have been set apart for lack of prerogative. The constraint on the capability of the courts posed a number of difficulties. Legal dispute is a compound problem and even the appeal courts find it difficult to resolve when customary law should be useful. For instance, force was taken to recover compensations for defamation, it was held that the words of complaint of disputants would not arise action in customary law, and consequently the chief lacked authority to hear adjudicate on the claim'.

Cappelletti asserts that, the goal of resolution is to stop or evade animosity which a judicial verdict might produce between the disputants, this corroborated the view of the interviewed respondents that the aim of the customary courts is for restorative and peaceful reconciliation among the disputants. If one party did not accept the court decision peace will not be reinstated except the parties are satisfied that fairness has been done.⁴⁰⁴ The litigant will therefore need to understand that the customary guidelines, including those which stipulate the suitable compensation for a given wrong verdict are applied by the court. Though, the guilty side must see reasons and facts how his conduct has fallen short of the customary set for a specific role as intricate in the conflict and must come to admit

⁴⁰³ R.B. Mqeke. 'The customary law of delict and a Bill of Rights' in *De Jure*, 25(2) 1992. Pp.462-467.

⁴⁰⁴ .Cappelletti, Mauro. *Toward Equal Justice: A Comparative Study of Legal aid in Modern Societies* New York: Dobbs Ferry, 1975, P. 245.

that the verdict of the court is impartial one. One made as recompense to re-integrate into the community.

In Africa generally and in Oyo and Zulu they make use of customary court structure to resolve conflicts, this practice is very insignificant when compare to other countries especially developed countries and their legal system for instance United States of America, Japan, dispute resolution emphasises negotiation; arbitration and compromise as the norm. Further, familiar procedures used by police, fellow citizen, or relations are preferred to official court process for dealing with offenders. Davies asserts that conciliation and resolution processes in the customary law courts in Oyo and Zulu can be equated to the official court with a system of arbitration or Alternative Dispute Resolution (A.D.R).⁴⁰⁵ He contends the customary law courts in both empires is to make use of the 'A.D.R' which is frequently used to define a range of conflict arbitration mechanisms that are short of, or substitute to, official court processes. Customary Law Courts accept a convincing way in order to persuade on an settlement, a negotiation or resolution and this role is so popular in cases containing family relations. The job of the court is to restore harmony within the troubled community.

7.6 Public Awareness of European Contact on Traditional Administrative Structures in Oyo and Zulu Empires

The finding of the interview revealed that majority of the respondents supported that foreign influence had negative effect on traditional administration of Oyo and Zulu, Brown airs his views with the respondents that the structure of political governance adopted by the colonial power in Africa was prearranged to serve colonial power on several occasions opposing to the way in which Africans governed themselves. Under the native

⁴⁰⁵ .Davis, L. P., 1994, 'Alternative Dispute Resolution', in Obilade, A & Braxton, G. (eds.) *Dile Process of Law* , Southern University Law Center, Louisiana and Faculty of Law, University of Lagos Publications, 1994, P.228.

arrangement, power was centered on kingship. Sovereignty to rule was needed from the people, without which governance would be unlawful. In colonial Africa, European powers created their authority and style of administration, and they deposed and displaced several African traditional kings and chiefs, and replaced them with other persons whom they sensed they could exercise control over, for instance in Zulu, King Cetshwayo and Dinuzulu were deposed and exiled and replaced with those who needed required traditional power to command obedience and respect from the people.⁴⁰⁶ The result of this was most noticeable in the chief-less states like the Igbo of Nigeria, Ga of Ghana, and Fulani of Nigeria. These societies had no formal or centralized traditional leaders or kings for the European powers to remove, and make their own chiefs, by choosing those they felt would obey their instruction. Their traditional leaders were rejected and ignored by the people, and in many cases became cruel because they enjoyed the support of the colonial powers. These chiefs were authorised to collect taxes levied on the people on behalf of the Europeans, in the form of the harvest of the land or whatever natural resources existed.⁴⁰⁷ In this way, they became tyrants with the right to punish anyone who shunned their command. In a case of communal resistance or failure to meet their request, they could be disciplined by the colonialists or destroy a community or punish a whole society.

Boahen and Ayittey also supported the view of respondents in their views that foreign influence had a negative effect on traditional administration in Africa, the strategies and approaches adopted by the different colonialists differed and were strange to Africans and especially to Oyo and Zulu people. The French and Portuguese adopted the policy of assimilation and association while the British adopted the policy of indirect rule. These policies were alien to Africa. Oyo and Zulu experienced the indirect rule policy under the British Administration and it had a negative impact on traditional administration of Oyo

⁴⁰⁶ G. Jeff Guy, *Destruction of Zulu Kingdom "The Civil War in Zululand" 1879-1884*. Pietermaritzburg: University of Kwa-Zulu Natal Press, 1994, Pp.65-68.

⁴⁰⁷ G. Ayittey. *Indigenous African Institution*. Pretoria: Brill-Nijhoff, 1991, P.72.

and Zulu people. The kings were no longer in charge of the local administration, they had lost their sovereignty to the colonial powers.⁴⁰⁸

Elias pointed out in their study to validate the views of respondent's interview on how European contact had negative impact ⁴⁰⁹on traditional government that colonial powers signed treaties with traditional rulers and princes, confirming British political sovereignty, although in the same period leaving native legal guideline and the administrative apparatus mainly to traditional rulers. This was learned by the notion that they had some admiration for existing traditional institutions and laws as a proper policy. This form of governance has been referred to as 'indirect rule'. This strategy embraced by the British helped to facilitate the system of fixing their own philosophies on their territories. During British colonial system, each colony was divided into regions with regional administrators, each region into provinces with provincial commissioners, and each province into districts with district commissioners. A district was usually made up of one or more of the traditional societies, and the daily administration of the society was under the traditional rulers and their council of elders.

Boahen, Idowu, and Webster likened the African chief to the apparatus of local municipality. The indirect rule system of government adopted by the British was correct and inexpensive, it also made it simple for potential matters of dispute between the two cultures to be identified and fixed harmoniously. The policies embraced by other European powers differed from the British policy in that they were highly centralised and authoritarian. The French, for example, pursued a policy of intentionally putting abolished traditional administrations and kingdoms they met. They followed the strategy of assimilation by which, for instance, in Senegal, the colony became an important part of their home state, rather than a distinct state. The natives were expected to assimilate French culture in every side, as it was believed to be of the main probable standard.

⁴⁰⁸ A.A. Boahen, Idowu, H.O., and Webster, J.B. History of West Africa Revolutionary Years 1815- Independence. London: Praeger Publishers, 1970, Pp.228-232.

⁴⁰⁹ M. Fortes, M. & E. E. Evans-Pritchard. African Political Systems. London: Oxford University Press, Pp. 225-227.

An Additional better illustration of this is the Belgian colonial system in the Congo. The Belgians followed a system of principally doing away with all African; they entirely took over the administration of the Congo. All rules, edicts and act came from Brussels. The Congolese people were never contacted in the government, as they were dominated and denied any access to their own affairs, due to the disregard with which the Belgians held Africans. Thus assimilation was a comprehensive colonial theory which pursued influence every aspect of lives of the colonised people.⁴¹⁰

Association was alternative system approved by those French colonialists who thought that assimilation was unachievable because Africans and other non-western people were racially lesser to Europeans. This was more achievable to wish for a 'mere association' with Africans in order to enable the Africans develop within their own traditions and norms. In this respect, this system was related to the British system of 'indirect rule', only that the French did not allow the indigenous rulers to act as intermediaries, they rather neutralised or deposed them and then re-arranged the society to suit their own concern, thus essentially altering the organisation of the communities as they were before. What became known in the kingdom of Dahomey, now called the Republic of Benin, in western Africa in 1894, shows clearly that the French despite⁴¹¹ conquering Dahomey, split it into kingdoms, leaving only the dominant area around the capital. The rest of the region were transformed to kingdoms, and retained under direct French government. All of these system adopted by many colonial powers had varying effect on traditional African structures.

While majority of the respondents interviewed in Oyo and Zulu were of the opinion that European contact had negative effect on judicial administration of Oyo and Zulu people, Menski and Ayittey in their research looked at it from another perception that the colonial

⁴¹⁰G.Ayittey. *Indigenous African Institution*. Pretoria: Brill-Nijhoff, 1991, P.91.

⁴¹¹Y.R.Barongo. *Political Science in Africa: A Critical Review*. London: Zed Books, 1983, P.146.

powers actually wanted to fortify the traditional system of courts and law. Efforts were made to codify traditional law and to truly document verdicts of the native courts. This was seen with the British commissioning reports of the Code of Native Customs and Rule. In Ghana, Sarbah wrote on Fanti customary laws to corroborate the view of respondents on matters of assets rights, civil and criminal matters; Africans were governed by African law and Europeans by European law.⁴¹² This effort strengthening the traditional system was criticised on the basis that the recording of the pronouncements of the traditional courts, the reports and efforts at codifying the native laws and customs, basically transformed the unique nature of African laws. The uniqueness of African laws as it was prior to colonialism is the fact that it was orally communicated from generation to generation. This meant that African laws were of a fluid nature, changing and adapting to the demands of the period, as at when needed. It can be contended that the act of lettering and keeping a record of laws may have introduced some measure of legal certainty, but has equally forced a firmness that was never present in African legal system before.

Therefore, though indigenous African system were downgraded in the look of the new official laws, they continued to progress and develop within the informal realm, as the people persistently to use them in their daily activities with one another. This led to a new fusion. The new laws imposed by the colonialists did not have the ability to eradicate people's religions and traditional socio-legal structures of society-based guideline by the stroke of the pen. The colonial positivist laws demanded authority, denying equal status to the native laws. They represented the ideal western model of legal system.⁴¹³

By the period almost all of Africa had been colonised, the laws of the separate colonising nations had been enforced on all the colonised territories, with various variations, and to varying degrees. Allott describes this as 'highly organised legal policies advanced in and for extremely different settings, inspired by different purposes, and it was supported up by the army and police forces of the colonising powers, which were quickly and

⁴¹²G. Ayittey. *Indigenous African Institution. Pretoria: Brill-Nijhoff, 1991, P.85.*

⁴¹³ .T.O Elias. *Government and Politics in Africa. Delhi: Asia Publishing House, 1983, P. 163.*

tremendously apply to the indigenous structure and people'. Simply because of the fact that the majority of Africans were at the time illiterate in the European legal system, and could not say any of the European languages, there was dawdling progress made in the effort to eliminate the traditional laws and structures.⁴¹⁴ This resulted in the enforced laws lingering out of range and mostly unreachable to the native people from ages, and even in situations where it was accepted, it was wrongly accepted. As clarified above, the British policy of indirect rule promoted the extension of African traditional administration during the colonial era, more than the policies of other Europeans. While traditional Africans had their own legal system, these laws were too primitive to be of use to the colonial powers who wanted to bring about change and new social order at a very rapid rate. Allott explains that several modifications that have taken place in native law, before pre-colonial and post-colonial rule, came from the traditional system itself in its distinctive nature of changing to meet the needs of the African people, as opposed to being the result of colonial imposition of legal system.

David and Brierley were of the opinion that during colonial administration, African indigenous institutions and structures were on the other hand significantly corrupted. For instance, in place of indigenous land tenure rules and community relations, colonial governments began a restructuring practice that presented the supremacy of the colonial state in the social, political and economic lives of indigenous people of African societies. For instance, cultural checks on royal prerogative were demolished in centralised indigenous kingdom; while in the decentralised kingdom, dispersion of authority along cultural developments was reversed with the imposition of appointed warrant chiefs.⁴¹⁵ This formed a philosophical foundation of domination of colonial state that replaced the

⁴¹⁴.Allott, A.N. *Evidence in African Customary Law*. In Cotran, E. & Rubin, N.N. (eds). *Readings in African Customary Law*. New York: Africana Publishing Corporation, 1970, P.123.

⁴¹⁵. Ayittey, G. *Indigenous African Institution*. Pretoria: Brill-Nijhoff, 199, P.87.

indigenous state. The colonial state with its strange foundation is what has transformed to the post-colonial state. This transition was on one hand, obvious by the consolidating the inherited centralised control from the west, and on the other, by the acceptance of imposing socialist administrations from Eastern Europe. In all spheres, the policies were unknown to the fundamental situations of Africa, as well as the nature and system of traditional administrations.

Findings from the interview in Oyo and Zulu revealed that European contact also affected the justice dispensation in civil and criminal verdict, especially in some aspect that has to do with murder, manslaughter, stealing and border conflict, the jurisdiction to hear the case was withdrawn from the native court to magistrate court or high court.

Lloyd and Opeloye sought that African culture suffered a setback with the European contact to validate the view of respondents interviewed; culture is the total way of life of people living in a particular area.⁴¹⁶ The European having an excessive influence on the African culture and systems did not associate to the total destruction of African social, legal and political cultures. At several occasions the colonial government tried to destroy the existing chieftaincy structure. This they did by enforcing force labour, ejecting people from their land, interfering with the traditional political institutions, removing of traditional rulers and appointing their loyalist. Through all of this, the indigenous systems by and large survived, though severely weakened.

With Africa subjugated and dominated, the Western culture and European mode of civilization began to thrive and outgrow African cultural heritage. Morton and Binns validated the views of respondents on the negative impact of contact with the Europeans brought to African culture, that traditional African cultural practices paved the way for foreign way of doing things as Africans became fully 'westernized'.⁴¹⁷ Western culture

⁴¹⁶ .Fortes, M. & Evans-Pritchard, E.E. *African Political Systems*. London: Oxford University Press, 1940. Pp.26-28.

⁴¹⁷ . Elias, T.O. *Government and Politics in Africa*. Bombay: Asia Publishing House, 1965, P.178.

now is regarded asFrontline civilization. African ways of doing things became primitive, archaic and regrettably unacceptable in public domain. Not only were certain aspects of the material culture in the colonies lost or destroyed, colonial societies also lost the power and sense of cultural continuity, such that it became practically impossible to recover the ability to strive for cultural progress on their own terms.

To support the views of respondents on the impact of cultural contact, in Oyo and Zulu we have heard comments that our cultures and traditions are old-fashioned; they hold back progress in nation building and that we should totally forget about them and accept new ways of life. Some say they are ‘dirty’ and ‘primitive’. They are perceived as negative by the new generation.It is important to emphasize fundamentally that urgent and more decisive steps need to be taken in order to rearrange and reverse this temporary trend of cultural emptiness, without which Africa may experience seasons of cultural extinction and drought of African values.⁴¹⁸

Afolabi and bleeker corroborated with the respondent’s views that significant fact about African cultural history is the convergence upon the native tradition of the two external influences the Arab-Islamic and the European-Christian to which the Africa has been exposed for well over a millennium. The values and standard of living associated with these traditions have been integrated and to a large extent indigenised African. This thought provides a wider perception on the phenomenon of Westernisation in Africa.⁴¹⁹

The most worrisome trend of westernization having been brought to Nigeria and South Africa polity, we must view these things critically and condemn it, with the aid of

⁴¹⁸ .Confidential interview of Chief Ganiyu, Ayoola. The Bashorun of Oyo, 73years, business, Bashorun Oyo, held on 7th June, 2017.

⁴¹⁹ .Afolabi, O. G.J. *Yoruba Culture*. Ife Osun State University of Ife and University of London Press Ltd, 1971, P. 113.

globalization, they seem to be spreading rapidly. When growing up as a child, indecent dressing, lesbianism, homosexuality and infidelity were things that were alien to Africa, but now some will tell you that such things are normal and right. While westernization have brought about many positive and negative changes in both empires, the study investigate the impact of contact with African culture. Ajayi pointed out his view on this to admonish the respondents interviewed that we should shun these negative thoughts of westernization and embrace the positive, so that our traditional norms and values will not be obliterated in the face of Africans and be replaced with western norms and value structure.

7.7 To examine Justice Dispensation in Oyo and Zulu Traditional Administrative systems

The interview revealed that majority of the respondents supported customary courts in Oyo and Zulu, as the hope of common people; this view was corroborated by Bennett and Fadipe that customary courts are cheap in term of court levy, only a token fee which is affordable. Therefore, since legal practitioners are not permitted in these courts, justice is affordable. The accessibility of customary courts to the people of both empires is ensured. Traditional courts exist in almost every area of traditional leaders or chiefs in Oyo and Zulu, which means that virtually every village has a court within the reach of most inhabitants. People do not have to travel long distances to magistrate's courts at district headquarters. The courts are also accessible in terms of social distance. Since the presiding chief and his people who constitute the court are not very different in terms of social status, wealth or education, disputants do not feel as intimidated by the chief's court as they would in a modern type of court.

The findings reveal that there is fair processes in appointment of the judges in Oyo and Zulu customary courts based on the interview of the respondents and this was supported by Adewoye that in Oyo, the power to appoint Presidents or Judges, and members of customary courts is vested in the Chief Justice acting on the recommendation of the

Judicial Committee.' The powers of the Chief Justice include power to dismiss on the advice of the Judicial Committee, the president or any member of a native court for inability to perform the functions of his office, misconduct or misbehaviour of any of such because as the Judicial Committee may consider it.⁴²⁰ A person to be appointed president or member of a customary court must (a) be literate in the English language, (b) possess at least the Primary VI certificate or its equivalent as well as suitable experience, and (c) be a native of the area of jurisdiction of the customary court. "Provided that the appointment of any person as a President, member of a customary court shall not be invalidated solely on ground that he does not possess a Primary VI certificate or equivalent." It appears the purpose of the provision is to enable the Justice to appoint the president or member of a native person whose educational qualification is below Primary or its equivalent. The inclusion of the possession of the Primary certificate or its equivalent would however safeguard that persons having less qualifications would be appointed only in the resort.⁴²¹ A person who has been imprisoned for any criminal offence involving fraud, dishonesty or moral turpitude is disqualified from holding office as president or member of a customary court.

Adewoye and Obilade also validated the view of respondents that there is fair process in the appointment of judges in courts, since the local monarch was to be responsible, there must be proper procedures of filling whatever vacancy might be created in the passage of time. To this end, in admiration of every known chieftaincy, a declaration was to be made in writing stating the customary law which regulated the selection of a person to be the holder of customary practice of acknowledged chieftaincy.⁴²² This meant that local inquiries were to be embarked on to determine how things had been done in the past to accommodate the new intake.

⁴²⁰O. Adewoye. *The Judicial System in Southern Nigeria 1854-1954* (London: Longman, 1977) Pp. 7-9.

⁴²¹O. Adewoye, *The judicial Agreement in Yoruba 1904-1908*. *The Journal of African History*, Vol. 12, No. 4. London: Cambridge University Press, <http://www.jstor.org/stable/181017>. Accessed: 21-06-2017.

⁴²²Fadipe, N.O. Identified three levels of administration of justice: the bale's court, the tribunal of the ward chief, and the central tribunal. 1970, P. 172.

Allott and Benett validated the views of respondents on the fair processes in the appointment of judge in Zulu tribal courts, the president of KwaZulu-Natal traditional chiefs cabinet has been authorized by the edict to appoint any person as a chief of a tribe, this means that anyone can be chosen as chief regardless of his lineage, this method was practiced during the Shepstone's period.⁴²³ It was made clear that chieftainship did not depend on hereditary succession, but upon selection by the supreme chief, and that whereas the supreme chief was willing to appoint sons of deceased chiefs, where those sons were fit and proper persons for such appointment, the supreme chief could remove a son of a chief in case of misconduct and appoint someone more appropriate in his place. This means that the chief's heir cannot succeed to his father's position without due appointment of the supreme chief. This circumstance may generate excessive friction as the rightful heir might oppose it if the position is given to someone who is not supposed to succeed according to customary law. Fortunately, few of such cases have taken place. Yet this possibility is unwanted. It is a further indication that the recognition of traditional chiefs has been biased and not complete as succession process has been tampered with. This could lead to an imposition of a chief who is not acceptable to the people, and is open to considerable criticism and protest.⁴²⁴

Dlamini and Rugege were of the opinion that the provisions of the Kwa-Zulu Natal Act stipulate that for purposes of general succession as defined in section 81, the heir to the hereditary traditional chief shall be the candidate whom the board appoints or recognises for appointment under section 2(7) of the act as successor to chieftainship position.⁴²⁵ This

⁴²³. Bennett, T.W. *The Natal Code of Zulu Law & the KwaZulu Act 16 of 1985 on the Code of Zulu Law*. South Africa: 2003, PP. 28-30.

⁴²⁴. Rugege, S., "The future of traditional hereditary chieftaincy in Southern Africa: The case of Lesotho", in Santho and Sejanamane (eds). *Southern Africa after Apartheid: Prospects for the Inner Periphery*, SAPES Books, Harare, 1991, Pp.68-72.

⁴²⁵. *Black Administration Act 38 of 1927 & Repeal of the Black Administration Amendment of Certain Laws Act 28 of South Africa*, 2005, P.38.

section, though, does not clarify that the board will recognise the appointment of the hereditary heir. It merely stipulates that somebody who will be appointed to be an heir to the throne of the deceased chief will be the one already appointed by the board. Section 10(2) of the Kwa-Zulu Natal Act provides that if the board suspects that a dispute may occur on whom would succeed, the board may instruct three advisers selected on account of their special knowledge of the Zulu tradition, custom, and laws to inquire into the matter and submit their report via the secretary. Saddle with these responsibilities they have equal power to that of a magistrate's court to summon witnesses, cross-examine them under oath and to enforce the production and submission of documents. The secretary is also authorized to inquire into all cases of chieftaincy conflicts and or of acrimony between chiefs or succession to chieftaincy, of disputed ethnics or in this case, he has all the powers conferred in a magistrate's court to summon witnesses, examine them under oath for the production of submitted documents.⁴²⁶

Koyana and khunou supported the views of respondents on a contrary perspective that instead for the supreme king to appoint a candidate of his choice, he should take cognizance of the act that creates the impression that despite the widespread ambit of section 2(7), the state president or the traditional committee as the case may be, will take acquaintance of customary law of succession. Moreover, the provisions of the later act will override those of the earlier one. It will only be for good and enough explanations that the claims of the customary heir will be ignored. Another difficulty which arises from the appointment of chiefs is that no distinction is made, particularly in respect of judicial powers, between an ordinary chief and the king. This is inadequate to many members of some ethnic groups because it amounts to undermining the superior status of

⁴²⁶. Dlamini, C., "The role of chiefs in the administration of justice", LLD Thesis, University of Pretoria, 1988, Pp,178-182.

the Zulu king.⁴²⁷ It may bring about hatred and conflict. They both agreed that selection of chiefs should be based on a good process that would be acceptable to the people.

The interview from the respondents revealed that dispensation of justice in Oyo and Zulu native courts were based on merit, in Oyo, dispensation of justice is between the plaintiff and the defendant. Cappelletti and Elias validated the views of respondents that Judicial arbitrating system began from the family, every married man was the head of his own immediate family and it was his responsibility to settle any animosity among family members promptly. He would listen to the appellant first, and then the defendant would be allowed to present his or her own defense, they would call on witnesses, if any, can be called. The head of the family would try to be impartial as much as possible to both parties involved, and would not identify a party as guilty and the other as innocent. This was not how to resolve the civil cases among the Yoruba. In such cases, either of the two parties could have reacted excessively in some way.⁴²⁸

Consistently, neither could he be freed of blame. Nevertheless, one party might be seen as being of more guilt than the other. The arbitrator would tell both parties where they had behaved badly, and otherwise. After telling each party its mistake, he would then settle the case either by asking the guilty side to apologize to the other, or simply warn both of them to abstain from bad habits that might generate bad blood. That was how a civil case was usually settled. But if one party was not contented with a settlement, he or she could appeal to the compound “court” by simply reporting the case there, headed by the oldest man in the family. Justice dispensation in traditional society was in stratum, which means the appeal from the family will go to the compound court, from compound court to ward or quarter court to apex court which is the king’s court.

⁴²⁷. Khunou, S.F. Traditional Leadership & independent Bantustans of South Africa: Some Milestone of transformative Constitutionalism beyond Apartheid, Vol.12, No.4 Potchefstroom, January, 2009, Pp.32-34.

⁴²⁸ . D.I. Efevwerhan Principles of Civil Procedure in Nigeria. Enugu: Chenglo Limited, 2007, P. 87.

Olaoba supported the views of respondents that justice in Oyo Yoruba was based on merit, the litigant or complainant would state the complaints and call witnesses, and the defendant and his or her witnesses would follow suit. His views was in the sense that during the presentation of their cases, each presenter had to squat (male) or kneel (female) as a show of respect to the elders. After listening to both sides, the family head would invite the adult members of the family present to comment on the evidence before them. It was the family head's responsibility to summarize the contributions of the mediators and settle the case. The adjudicator's comments might be contributions of facts or questions to establish facts. A dinner party sometimes followed the settlement to return the mutual love within the family. Libations were poured to appease their ancestors before they themselves consumed any food or drink.

The interview findings revealed that most respondents supported that justice dispensation in Zulu native courts were based on merit as well; Koyana corroborated with the view of respondents that in Zulu, communal involvement played a significant part in justice dispensation processes. All men present could take part in the court hearings and therefore there was communal involvement and the judgments handed down tried to maintain peaceful accord within the community.⁴²⁹The court is open to anybody. Any person present in the court may question the plaintiffs and the people present may proffer information.⁴³⁰Van Niekerk, was of the opinion that creation of forums for conflict resolution in which the society may contribute jointly and cooperatively should not only be regarded as the heritage of the people's courts, but also a confirmation and continuation of the spirit of communitarianism and collectively underlying African customary law and social ordering.

⁴²⁹D.S. Koyana. *Customary Law in a Changing Society*. Cape Town: Juta, 1980, Pp.320-325.

⁴³⁰G.J.Van Niekerk. 'The Administration of Indigenous Criminal Law in Southern Africa- A Comparative Law Reform Study' in *De Jure*, 24(2) 1991 Pp.277-289

Bennett corroborated the respondents that justice dispensation in Zulu was based on merit, and the Zulu people had their own way of administering justice. The chief's and headmen's courts were the courts of the day. Chiefs in kwa-Zulu Natal were hereditary, they were not elected. Traditional chief is a privilege by birth of his chieftainship.⁴³¹ He had exclusive authority over the native coercive organizations and he was also answerable for the well-being of his people. 'The chief was the ruler of his tribe and father of his people. All members of the tribe were his subject under his guard and "belonged" to him'. The ruler could not arbitrate alone, and amongst most people he had at least to be helped by a court council. Mostly all men present could take part in the court hearings. In pre-colonial times, there was no strict division between civil case and criminal case. Headmen's courts functioned as native courts and had jurisdiction to arbitrate minor conflicts arising from their wards. Resolutions of these courts were subject to appeal to the chief's court. Headmen were assisted by councillors in their arbitration of cases. Headmen's courts did resolve petty crimes, while they were authorized to examine serious crimes before taking them for judgment in the chief's court.

Bekker validated the views of respondents on justice dispensation that since communal participation in the court deliberations is mostly accepted, the Chiefs take crowd support and view into concern, thus a largely male audience can influence matters in favour of male litigants.⁴³² To that end, matters are neither held in cases of sexual offences such as rape in an open court, and women are always mandatory to appear in the public giving a full detail of the story which many find embarrassing and end up deserting their cases for fear of further embarrassment. This unintentionally affects and infringes their right to access to justice. Native law courts also comprise practices that discriminate against rape victims. A girl who has been raped is often stigmatised by society, which can affect her

⁴³¹. J.L Comaroff. 'Chiefship in a South African homeland' in *Journal of Southern African Studies*, Vol. 38, No.3, September 2012, Pp 36-49.

⁴³²J.C. Bekker. *Seymour's Customary Law in Southern Africa*. 5th ed. Cape Town: Juta. 1989, Pp.135

ability to marry and the amount of bride wealth that she can make for her family. Vorster asserts that the native court Judges will occasionally force the girl to marry her rapist as a way to avoid this social stigma and maximise of her potential bride wealth.

This method contravenes Article 15 of the T.C.S.S, 2011 which provides that, ‘Every person of marriageable age shall have the right to marry a person of the opposite sex and to found a family according to their individual family laws, and no marriage shall be entered into without the free and full consent of the man and woman planning to marry’. Since the reactions to sexual violence against women and girls are determined in part by their bride wealth value and the social affairs that are at stake, native courts naturally view rape as a matter that demands social recompense, rather than justice for harm done to the individual. The customary courts sometimes view a mature woman who is raped to be undeserving of compensation or the quest of justice, while the rape of an unmarried young woman is considered to be a greater crime.⁴³³ The reply does not automatically look primarily to the harm inflicted to the woman in question, but rather the harm to the family as a result of her reduced bride wealth. This unsatisfactory treatment of the same offence committed on the same sex discriminates against women on the basis of social status contrary to Article 14 on equality before the law. The disputant must be treated equally and fair for both parties to agree with the judgement, otherwise if a party is not satisfied with the judgement, there is a provision to appeal to magistrate. The purpose of communal participation is to have a fair judgement which is the watchword of customary courts in Africa.

Obilade, in his research, corroborated the views of respondents interviewed on merit of justice dispensation in Oyo and Zulu comparing it with other African states like Congo, Tanzania, and others. Justice dispensation from the Kuba tribes in central Congo makes use of two types of conflict resolution, the “moots” informal conflict resolution and the

⁴³³O.A. Obilade. *The Nigerian Legal System*. London: T. Jackson, 1979. pg. 18-24.

“Ibaanic” more formal tribunals held under authority of the king and the chiefs to deal with more important conflicts. The complaint is lodged by a plaintiff, the judge must be competent, who then forms a board composed by other competent judges.⁴³⁴ A main criterion of competence of status of judge is the existence of position relations and other personal connections between judges and the complainants. Such connections between the judges and complainants are important because the proper relationship between courts and parties is considered necessary to ensure that "the largest possible numbers of background facts about the litigants and the case can be known to the judges. Thus the judges are chosen not for separate neutrality as regards the disputants, but rather precisely because of their probable connection to an understanding of the facts and background of the dispute. Their out-of-courts knowledge is considered highly relevant and vital to their ability to resolve the case, and have a fair judgment would be acceptable to both parties.

The study revealed that justice dispensation in Oyo and Zulu were based on merits based on respondents interviewed; Leonardi and Abdul Jalil corroborated Bennet and Elias views that customary justice dispensation in Africa are similar to each other relating it to justice dispensation in Sudan, that native authorities control their local activities by administering the unwritten rules and practices that are recognised to drive required rules traced to the customs and practices of the people. In South Sudan, conflict resolution is a role played by diverse actors across the Country. The family and community elders are nearly always the first and desired source of conflict resolution and those that cannot be resolved by elders are transferred to the customary law courts. Nevertheless, successive governments have sought to institutionalise certain official ways of conflict resolution.⁴³⁵ Often embedded in terms of empowering native authority or protecting local custom, this has been an attempt to increase government control over local society and the resulting institution of native or

434. A. Obilade. *The Nigeria Legal System*. London: Sweet and Maxwell, 1979, P 218.

⁴³⁵. Cherry Leonardi.& M.A.Musa Abdul Jalil *Traditional Authority, Local Government & Justice in The Sudan Hand Book*. New York: James Currey 2011, Pp. 110-11.

traditional administration are seen by the government as an avenue for regulating, monitoring and maintaining social stability in the local communities.

They assert that procedural justice involves strategies for resolution processes that ensure that the parties to a conflict are treated equally, that their case is decided by a person with no concern in the case and who is obliged to render a decision exclusively on the basis of truths and objective rules rather than on personal favorites, and that anyone making an assertion or accusation must right to provide provable proof to support it.⁴³⁶ Under international human rights law, everyone has the right without discrimination to a ‘fair and public hearing’ in criminal and civil matters ‘by a competent, independent and impartial tribunal established by law’. The African Commission on Human and Peoples’ Rights, based on Leonardi and Abdul Jalil, views justice dispensation in Sudan customary courts as one based on merit.

Collier validated respondents views that customary courts decisions in Africa were similar to each other looking at it from the Senegalese customary adjudication that the Senegalese in doing away with native courts as institutions, did not considerably abolish the features of customary system itself. Rather, like the Northern Nigerian reformers in founding the area courts, the Senegalese seemingly decided to use in the new justice of the peace courts a regularised procedure that however retained a strong customary character.⁴³⁷ The Senegalese permitted the traditional dispute arbitration to carry on, but encouraged the public to use the new courts by adopting a simple informal system almost all guidelines may be oral, and few formal documents are involved. In that system, which in all respect parallels the native procedure it substitutes, the courts is active and “assistential” in every phase: from trying reconciliation, preventing default the only stern error possible from happening, to ex-officio gathering proof and listening and weighing all the testimony

⁴³⁶ A.N. Alliot Evidence in Africa Customary Law. In Cotran, E. & Rubin, N.N. (eds.) Readings in African Customary Law. New York: Africana Publishing Corporation, 1970, P. 183.

⁴³⁷G. Collier. Sierra Leone. Experiment in Democracy in an African Nation. New York: New York University Press, 1970. Pp. 180-186.

presented for cross examination, and making sure they were fair to the disputant. The purpose of this procedural was to arrive at a decision that would be acceptable to both parties.

Result from the interview revealed that justice dispensation in customary courts in Africa, Oyo and Zulu in particular were based on merit. All these corroborated the findings from the questionnaires. The respondents interviewed in Oyo and Zulu revealed that, the King can remove traditional court judge in the pre-colonial system of justice administration. Fadipe supported the views of respondents that before the removal order can take place, there should be a lot of allegation against the misconduct of that particular chief, and a warning order must have been issued from the supreme chief.⁴³⁸The chief will be given an opportunity to defend himself before the supreme chief and his council, after if such allegation still persists, the king will order his remover or depose such chief. During colonial period in Oyo, the king could not remove the customary court judge based on the native courts ordinance of 1918, all the powers the king used to enjoy were abrogated and transferred to the native courts under the supervision of resident commissioner.

Adeoye opines that colonial government sought to standardize the chieftaincy institution in Oyo-Yoruba by enacting a law to offer for the selection and approval of chiefs, for the determination of certain chieftaincy conflicts, for the suspension and deposition of chiefs and for purposes related there with.⁴³⁹Some steps were taken to define these terms for the purpose and to avoid obscurities. The word "chief" was used to describe a person "whose chieftaincy title is connected with a native community; these include chiefs and traditional rulers".

Adeoye also corroborates that the power to appoint presidents or members of customary courts is vested in the Chief Justice acting on the recommendation of the Judicial

⁴³⁸ . N.A. Fadipe. *The Sociology of the Yoruba*. Ibadan: University Press, 1970, P. 208.

⁴³⁹ .Adeoye O., *The Judicial System in Southern Nigeria 1854-1954* (London: Longman, 1977) Pp. 7-9.

Committee, and the power to remove the president or any of the members also is vested with the committee. Before the judge of the customary committee can be removed, there must be a series of allegations and petition letters from the public to the Chief Justice, based on misconduct activities in the court, a warning letter will be issued to desist from such conduct, if the situation still persists, a judicial panel will be set up to investigate the matter, on the recommendation of the chief justice, such judge or president would have been given a suspension letter, until the outcome of the investigation, and if found guilty, he would be sacked and if not, he would be reinstated.

In Zulu, the provisions of the Kwa-Zulu Natal Act stipulate that for purposes of general succession as defined in section 81, the heir to the hereditary traditional chief shall be the candidate whom the board appoints or recognises for appointment under section 2(7) of the act as successor to chieftainship position.⁴⁴⁰ This section, though, does not clarify that the board will recognise the appointment of the hereditary heir. It merely stipulates that somebody who will be appointed to be an heir to the throne of the deceased chief will be the one already appointed by the board. Section 10(2) of the Kwa-Zulu Natal Act provides that if the board suspects that a dispute may occur on whom would succeed, the board may instruct three advisers selected on account of their special knowledge of the Zulu tradition, custom, and laws to inquire into the matter and submit their report via the secretary. Saddled with these responsibilities, they have equal power to that of a magistrate's court to summon witnesses, cross-examine them under oath and to enforce the production and submission of documents. The secretary is also authorized to inquire into all cases of chieftainships conflicts or and of acrimony between chiefs or succession to chieftainships, of disputed ethnics or in this case, he has all the powers conferred on a magistrate's court

⁴⁴⁰.Black Administration Act 38 of 1927 & Repeal of the Black Administration Amendment of Certain Laws Act 28 of South Africa, 2005, P.38.

to summon witnesses, examine them under oath for the production of submitted documents.⁴⁴¹

But the provisions of the Kwa-Zulu Natal Act stipulate that for purposes of general succession as defined in section 81, the heir to the hereditary traditional chief shall be the candidate whom the board appoints or recognises for appointment under section 2 (7) of the act as successor to chieftainship position.⁴⁴² This section, though, does not clarify that the board will recognise the appointment of the hereditary heir. It merely stipulates that somebody who will be appointed to be an heir to the throne of the deceased chief will be the one already appointed by the board. Section 10(2) of the Kwa-Zulu Natal Act provides that if the board suspects that a dispute may occur on, whom would succeed, the board may instruct three advisers selected on account of their special knowledge of the Zulu tradition, custom, and laws to inquire into the matter and submit their report via the secretary. Saddle with this responsibilities they have equal power to that of a magistrate's court to summon witnesses, cross-examine them under oath and to enforce the production and submission of documents. The secretary is also authorized to inquire into all cases of chieftainships conflicts and or of acrimony between chiefs on succession to chieftainships, of disputed ethnics. In this case he has all the powers conferred in a magistrate's court to summon witnesses, examine them under oath for the production of submitted documents.⁴⁴³ The board also has the power to sack, remove or reinstate any customary judge.

The study sought to know whether customary courts verdict are respected in Africa especially in Oyo and Zulu, respondents' interview indicated that most of the responses

⁴⁴¹. Dlamini, C., "The role of chiefs in the administration of justice", LLD Thesis, University of Pretoria, 1988, Pp,178-182.

⁴⁴².Black Administration Act 38 of 1927 & Repeal of the Black Administration Amendment of Certain Laws Act 28 of South Africa, 2005, P.38.

⁴⁴³. Dlamini, C., "The role of chiefs in the administration of justice", LLD Thesis, University of Pretoria, 1988, Pp,178-182.

showed that customary verdicts were respected in Oyo and Zulu. Supreme Court of Nigeria views the nature of customary arbitration and other issues as a correct restatement of the law and practice of customary arbitration in Nigeria as known to the village communities that utilize the process as a dispute resolution mechanism.⁴⁴⁴ Obilade supported this view that old native courts ordinances of Nigeria spelt out the type of punishment for contempt of customary courts within their jurisdiction in Oyo-Yoruba, the courts should have way of enforcing order for the people to respect the courts decisions and obey the customary courts verdict. The decision of the court is also a tacit approval of the existing social relationships in these communities, as well as showing that social pressures, or if there is need for external policing force, is what is needed for the enforcement of the decisions of the customary arbitrators to punish contempt of courts. Furthermore, the decision strikes a balance between the need to prevent arbitrator bias or violation of the parties' right to a fair hearing and the need to recognize the right of the members of the local communities to settle their disputes in a manner acceptable to them.⁴⁴⁵ The right of the parties to withdraw from the proceedings is an antidote against arbitrator bias or violation of the parties' right to a fair hearing.

Verdicts in native societies took many forms. They included banishment, curses, trial by ordeal of various types such as swimming in a pool of crocodiles and sometimes in form of fine, at times, it depends on the nature of offence committed. To ensure that individual's punishment commensurate with the crimes they committed, some laws were enacted to normalise punishment meted out in response to types of customary practices or rules. One such statute is the old Native Courts Ordinance of Nigeria of which provides as follows: For offense against any native law or custom, a native court may subject to the provisions of this Ordinance, levy a fine or imprisonment or both, or may cause any punishment

⁴⁴⁴ A.O. Obilade. *The Nigerian Legal System*. Ibadan: Spectrum Law Publishing, 1979, P. 32

⁴⁴⁵ The Chief law, Cap 142, of the western Nigeria, Section 2. Pp 38-41.

authorized by customary law or custom, provided it does not involve injury, or torture, and is not repugnant to natural justice and humanity.⁴⁴⁶

The respondents interviewed revealed that customary courts verdicts were respected in Zulu, traditional chief's court would not be real courts, if it did not have the power to ensure respect for and self-esteem of the proceedings of the court. In exercising their lawful judicial functions, chiefs and headmen are entitled to the privileges of a court of law in respect of disobedience of their orders. The contempt of court attracts fine depending on the nature of the case. Court may impose a fine not exceeding any such offence.⁴⁴⁷ The present contempt of court fine had been upwardly reviewed; it varies according to the nature of offences. Under section 20 (1) of the statute, the fine levied was a suitable one and that section 20 of the code does not apply in this instance. It would therefore appear that the judge accepted that a chief has inherent jurisdiction to punish for contempt. In one tribe the investigation revealed that fifty percent of the cases were for contempt of court. It would seem that this court was firm in safeguarding respect for its operation and compliance of its orders and verdicts.

Bennett and Forsyth corroborated the views of respondents on the respect of customary court verdict in Zulu courts, the chiefs may fine any person if found guilty after a thorough hearing of both parties, it is immaterial whether the court exercises civil or criminal jurisdiction or whether it has functioned within or outside its jurisdiction, after advice to appear. Failure to obey an order to appear in court is not contempt in facie curiae. Where a person has committed contempt of court, the court may summarily try and punish him after informing him of the misconduct which constitutes the offence. But the offender must be afforded an opportunity to give state why he should not be convicted, especially if his action is not so unequivocal as to demonstrate utter contempt. The summary and drastic

⁴⁴⁶ A.k. Ajisafe. *The laws and Customs of the Yoruba People*. Lagos: Kash and klareBookshop. 1946, Pp. 80-84.

⁴⁴⁷ .Constitutional Assembly Public Hearings on Traditional Authorities, Cape Town, 1995. P, 38.

procedure should be resulted to only with extreme caution because the judicial officer is involved in prosecution.⁴⁴⁸The judges must be very careful and consult with others before the judgment will be delivered.

Bennett supported the views of respondents that courts verdicts were being respected at the rural level, and these could be seen in some proceedings where almost fifty percent of the cases were for contempt, the impression gained was that the chief was too passionate to protect the self-respect and authority of his court. A chief has jurisdiction over those residents in his ward. His jurisdiction is territorial and not personal. But if a culprit does not object and accepts and submits to his jurisdiction which he does not belong to, he cannot subsequently complain, but the court will, though, not lightly take up a litigant that has submitted himself to the jurisdiction of the court or the case may be transferred to appropriate court that had jurisdiction to hear the case.⁴⁴⁹

Verdicts in most African customary courts decisions were collectively decided, and backed up with the norms and traditions of African people. Where there is a breach of customary law, the people themselves normally will collectively determine the suitable sanction. In some societies before the advent of colonial powers in Africa, there were chiefs and kings who had been authorised by the people to serve as Judges, in most cases the kings or Chiefs would usually sit in Council and hardly ever determine any issue without consultations with the elders within the community, in effect all sanctions were collectively determined and the type and gravity of the sanctions for particular crime was carefully noted, as a guide in case of future breach.⁴⁵⁰The sanction for an offence is

⁴⁴⁸. C.F Forsyth, & T.W Bennet. *The Place of Private International Law within the Legal System*, Cape Town: Juta 1981. Pp.205-207.

⁴⁴⁹T.W.Bennett. "The Compatibility of African Customary Law and Human Rights". Cape Town: *JUTA JURIDICA*, 1991, 153-155.

⁴⁵⁰T.O.Elia. *The Nature of African Customary Law* in Cotran, E. & Rubin, N.N. (eds). *Readings in African Law*. New York: Africana Publishing Corporation, 1970. Pp. 68-71.

therefore uniform and regular, though each case is examined and determined on its own merit. Customary law has a distinctive characteristic of being totally unwritten and only known to its subjects.

It is not all the practices and customs that have the force of law, many practices are merely obeyed without any fear of being punished when there is a breach, while some that touches the life and well-being of the community or affects the well-being of the community is normally backed with sanctions. The court system though seemingly rudimentary is quite effective, and there are also local police attached to the king's court to enforce the decisions of the courts, while the council of elders and other family heads also cooperate to ensure strict observance to the verdicts.⁴⁵¹

7.8 Public Perception on Doctrine of Separation of Power in Oyo and Zulu

The study revealed that majority of respondents interviewed supported that doctrine of separation of power exists in Oyo and Zulu, Lloyd supported the views in contrary to state that the doctrine of separation of power was strictly observed in Africa, before the advent of the British, there were in existence The Alaafin, Oyomesi, Eso or Military, Eunuchs, Ogboni, and Ilari; while in Zulu we had the Isilo, Amakosi, Iziduna. The duties and functions of each chief were known to them, the idea came into being because the task of administration was cumbersome, and these duties would be performed by chiefs in their different territories. These were done in assisting the king in their daily administration. These brought about necessary checks and balances in Oyo Empire, and separation of powers in both empires⁴⁵²

⁴⁵¹R.A. Duff. "Penal Communications: Recent work in the Philosophy of Punishment", in *Crime and Justice: A Review of Research*. Vol. 20, 1996, 41-43.

⁴⁵²P.C. Lloyd. *Political & Social Structure in Biobaku*, S.O. (ed). *Sources of Yoruba History*. Oxford: Clarendon Press, 1973, pp. 212-213.

The study revealed that majority of the respondents interviewed in Oyo supported that there is doctrine of separation of power in Oyo traditional administration, Johnson corroborated the views of respondents that separation of power do exist in Oyo and stipulates the duties and function of each organ, the Alaafin, Oyomesi and Ogboni and how these organs act as a check on each other to avoid autocratic rule in the administration over the people of the empire.

The interview of the respondents revealed that there is separation of power in Zulu, since the task of administration is too cumbersome and the King cannot be saddled with the responsibility of governance alone. Eugene supported the views of respondents that the king had to delegate duties and functions among his chiefs, The Isilo, Amokhosi, and Iziduna. The purpose of the separation of power doctrine in Zulu was to make the act of governance effective and efficient; duties and functions were divided among the chiefs in daily administration.⁴⁵³

Dlamini asserts that in contrary to the interview there was no separation of powers⁴⁵⁴. Having in mind the main reason for the principle of separation of powers, which is to safeguard the individual freedom, this was not a problem in the traditional society. In Zulu society, importance was not so much on the guard of the rights of the individual but on how to safeguard the interests of the society as a group. Hence, the traditional judicial ladder of the Zulu people was based on the kinship or social system.⁴⁵⁵

In Africa the machinery of administration rest on the chiefs or rulers who acted as the source of centralised authority, Ayithey. They had authority in every area of the community life, and were usually assisted by a well-established council of elders, called

⁴⁵³.G Jeff, *Destruction of Zulu Kingdom "The Civil War in Zululand" 1879-1884*. Pietermaritzburg: University of Kwa-Zulu Natal Press, 1994, P.85.

⁴⁵⁴C.R.M Dlamini, "The role of chiefs in the administration of justice", in KwaZulu-Natal LLD Thesis, University of Pretoria, 1988, 145

⁴⁵⁵ .G. Ayithey. *Indigenous African institution*. Pretoria: Brill-Nijhoff, 1991, P. 218.

the inner council, as seen in some cases. This ‘council of elders’ was the advisors to the chiefs, and worked in tandem with the chiefs in governing the societies. A chief could not and was not customarily allowed to take unilateral decisions; he needed to consult and seek his advisers’ opinions first before taking any action related to the administration of the village. He could also not impose his own opinion on the council. He could attempt to make them see things from his own point of view, but if they did not agree with him, he could do nothing but to adopt the general opinion.

The council of advisers was usually made up of elderly men of good conduct in the societies, headmen of the different wards or lineages making up the village, who were well respected. They acted as intermediaries between the chief and the village or tribe. Ayithey opines that they carried out two principal duties; firstly, they brought to the attention of the chief the concerns of their people, and the happenings from the different wards, thus advising and assisting the chief in administering the village. Secondly, they acted as a sort of check on the use of authority by the chief, thus preventing abuse of power. Amoah criticised the actions or inactions of the chief and could ultimately demand his deposition in cases where he disrespected the time-honoured customs and traditions of the village.⁴⁵⁶

The findings of the majority of the respondents interviewed revealed that in Oyo and Zulu the head of traditional administration were kings. Quashigah corroborated the views of the respondents that in pre-colonial Africa conception ‘the King or Queen ruled but at the mercy of the people, for a King without subjects is no King or Queen’.¹³ In terms of the form of governance that was practised then in Africa, ‘the people’ set the standards governing their ruling, by which the actions of the ruler or leader were judged. The leader could not rule if he is not acceptable by the people, his leadership will be sanctioned. For instance, in certain societies, the need and want of the people was expressed through the Chiefs who were considered to be the mouth piece of the people, and who constituted

⁴⁵⁶ .G. Ayithey. *Indigenous African Institution*. Pretoria: Brill-Nijhoff, 1991, P.105

some sort of ‘checks and balances’ for the authority and power of the Chief or King/Queen, as the case may be.⁴⁵⁷ This in many ways resembles the western democracy, whereby leaders are elected and can be removed by the people. Structures of political governance in pre-colonial African societies resulted from the bond of mutual support between the people and the rulers. Honesty and respect for the people by the rulers, and vice versa, was the basis of political authority in traditional African societies. The governed and rulers were bound by a common heritage, culture and mythology (belief in the supernatural).

Within the pre-colonial African societies, there were checks and balances on the powers of the rulers. These were evidenced in some of the practices, traditions and beliefs of the different societies. The allegiance of the subjects could, for example, easily be transferred from one ruler to another, if the ruler turned out to be despotic, cruel or a tyrant. The ruler is also expected to earn the respect of his people, and this was not based on force or intimidation. If unsatisfied, the people may decide to stop visiting the rulers’ court, thereby isolating him, or they could move to another grouping or settlement and transfer their allegiance to that ruler.

Within the pre-colonial African societies, there were checks and balances on the powers of the rulers. These were evidenced in some of the practices, traditions and beliefs of the different societies. The allegiance of the subjects could, for example, easily be transferred from one ruler to another, woodman and Bryant assert that the ruler turned out to be despotic, cruel or a tyrant. The ruler is also expected to earn the respect of his people, and this was not based on force or intimidation. If unsatisfied, the people may decide to stop visiting the ruler’s court, thereby isolating him, or they could move to another grouping or settlement and transfer their allegiance to the ruler of that grouping. A dictatorial attitude on the part of the ruler would often lead to his assassination or removal by his own kith

⁴⁵⁷ Evans-Pritchard, *African Political Systems*. London: Oxford University Press. 1940, P. 218.

and kin. A good example of this is the story of Shaka, king of the Zulus of Southern Africa, who reigned around 1828.⁴⁵⁸

The findings of the survey indicate that delegation of judicial duties and other important decisions can be done and delegated by the king in Oyo and Zulu. This corroborates the views of Eugene and Johnson in that separation power do exist in Zulu traditional administrative system, Ajisafe and Koyana corroborated the views of respondents that from time immemorial, judicial administration has been in existence in Africa as well as in Oyo and Zulu depending on the nature of administration that was being practiced, whether centralised or non-centralised system of traditional administration. But Oyo and Zulu were practising centralised administration and their judicial system was in strata.⁴⁵⁹

In Oyo, judicial system can be delegated by the king to corroborate the views of respondents. Fadipe's view on this was that Oyo had an organised system of judicial administration, even before the advent of colonial administration. The administration of justice in Oyo was similar to political administration, the king had to delegate judicial function to the chiefs under him and the chiefs enjoyed the king's support in performing judicial functions. Ajisafe supported this view by saying judicial process and delegation of duties started from the family, to extended family, chiefs and the Apex court was the king's court.⁴⁶⁰

While also in Zulu, judicial function can be delegated, to corroborate the views of respondents. Jeff and Binns say since the king cannot rule alone, he rules in conjunction with his council, and the traditional chiefs and delegates judicial functions to them for the smooth running of the government. Bekker opines that the judicial administrative system

⁴⁵⁸A.T.Bryant. *Olden Times in Zululand and Natal*. Cape Town: Struik Publishers, 1965, P.158.

⁴⁵⁹A. Ajisafe. *The Laws and Customs of the Yoruba People*. London: George Routledge & Sons, Ltd, 1924, P. 168.

⁴⁶⁰W. Peter Morton,. The Yoruba Kingdom of Oyo in (eds.) Darryll, Forde and Kaberry, P.M. *West African Kingdoms in the Nineteenth Century*. London: Oxford University Press, 1967, Pp.82-85.

in Zulu started from family to the lineage, district and the final which is the highest court was king's court.⁴⁶¹

Justice was maintained through the stratum explained above, by using ad hoc councils of the kinsmen and neighbours of the parties involved to resolve whatever disputes that arose. The case can be transferred from one unit of the court to another, depending on the disputant, if they were not satisfied with the judgment but the final and the supreme verdict was that of the king's court. His verdict was binding on the people involved, procedures were always in place to hear disputes; at times they may resolve into alternative dispute resolution.

In Africa, the centralised authority, administrative machinery and judicial institutions had their own courts and their indigenes were obliged to the courts. For instance, they include the Fanti of Ghana, the Yoruba of Nigeria, the Zulus and Pedi of South Africa, the Bayankole of Uganda and the Bemba of Zimbabwe. Changes in the level of centralisation and development of hierarchy led to transitions from a small polity to a state polity. These usually differed from nomadic bands to intermediate forms, to complex, hierarchical kingdoms. A high level of judicial and advanced political consciousness and a sense of racial or even national identity distinguished these societies.⁴⁶²

Ayittey's view was that these societies had chiefs or rulers who acted as the source of centralised authority, they had authority in every area of the community life, and were usually assisted by a well-established council, called the king's council, as seen in some areas. This council was the advisors to the king, and worked in cycle with the chiefs in governing the societies. A chief could not and was not customarily allowed to take unilateral decisions; he needed to consult and seek his advisers' opinions first before taking any action related to the political and judicial administration of the village. He

⁴⁶¹T.W.Bennett, *The Application of Customary Law in Southern Africa: The Conflict of Personal Laws*. Cape Town: Juta, 1991, P.148.

⁴⁶²T.O.Elias T.O. *The Nature of African Customary Law*. Manchester: Manchester University Press, 1952, P.228.

could also not impose his own opinion on the council. He could attempt to make them see things from his own point of view, but if they did not agree with him, he could do nothing but to adopt the general opinion.⁴⁶³

In another development, the study revealed that the king can delegate judicial functions in both empires, because this practice had been for ages in African societies. The main purpose of the traditional judicial practices is to ensure good conduct of individual behaviours in the society and to make sure there is peaceful co-existence in African society.

7.9 Conclusion

Fundamentally, the study find out that the appointment of chiefs has been altered by the European power intervening in native administration in Africa, using divide and rule policy in traditional administration in Africa. The imposition of chiefs was done against the wish of Africans and this was reflected in the administration of justice, this situation degenerated to rancour and crisis in Africa and many kings were deposed or exiled. However to address such future occurrences in Africa and Oyo and Zulu especially the study suggest that customary law of succession that has been in practice for ages should be revisited. A appointment of chiefs should based on customary law of succession, unless there are strong and acceptable explanations for deviating from custom.⁴⁶⁴ The main weakness in the appointment of the chief in managing the affairs of the courts according to custom is that the appointment is not based on his legal expertise or educational qualifications, which is not necessary in the olden days but the chiefs must be sound in the custom and norms of their people. The only saving factor is that in Oyo the native court chiefs always consult with other members of the courts before verdict can be delivered.

⁴⁶³ .Ayittey, G. *Indigenous African Institution*. Pretoria: Brill-Nijhoff, 1991, P.118.

⁴⁶⁴ . Ajisafe, E.A. *The Law and Customs of the Yoruba People*. Lagos: Cash & Klare Bookshops, 1946, Pp.201-205.

While in Zulu the chief does not act as an individual but depends on his isiduna. Although the jurisdiction of chiefs is limited in criminal cases. The study now conclude and proffer a solution to chieftaincy dispute created by the European powers that among the criteria for the appointment of chiefs educational qualification and customary law of succession should be considered.⁴⁶⁵ While in the administration of justice, courts reflect the sociological and cultural history of African society they serve. This must be done with topmost sincerity and fairness, conflict must be settled, people should leave in harmony and peaceful co-existence must be restored.

GENERAL CONCLUSION

The study has examined the procedural process in African traditional courts, this processes were very efficient in the administration in the administration of native courts and leads to fair justice dispensation. The research analysed and explored various customary courts processes in Africa and find out that the first step towards fair proceedings involves the arbitrators and the disputants, the courts clerk and their official witnesses.⁴⁶⁶ The process must be fair to disputants before the proceedings will take place, In Oyo and Zulu the traditional chiefs has a major role to play in the courts processes, because they have been designated as a presiding officer who have sworn to always say the truth. The chief's role are so germane in administration of customary courts, since they are the custodian of people's traditions, customs and norms which is very significant in customary court adjudication.⁴⁶⁷ The research findings also revealed for the courts verdict to be respected the disputant must testify for fair processes in courts administration and proceedings. The main objective of the native courts processes is to maintain peace and harmony and resolve conflict according to the norms of the society.

⁴⁶⁵. Bekker, J.C. *Seymour's Customary Law in Southern Africa*. 5th ed. Cape Town: Juta. 1989, Pp. 168-173

⁴⁶⁶. Fadipe, N.O. identified three levels of administration of justice: the bale's court, the tribunal of the ward chief, and the central tribunal. 1970, Pp. 227-228.

⁴⁶⁷ J. A. Cloete, J. A.: *Administration of Justice*. Pretoria: Van Schaik Publishers, 2012, P. 132.

The study has established that litigation processes begins from the plaintiff by filing a case against the defendant in customary court, this application will be received by the clerk of the court. Once the application is received, summons has to be issued by the clerk of the court, service of court summons is undertaken by the bailiff. The bailiff will deliver the document to the defendant. The study also revealed that there are approved forms of services that are permitted in customary courts in Africa according to the law, the date of proceedings must be fixed in the summon letter. The plaintiff and the defendant arrived, the court clerk calls the case, and the chief request the disputant to identify themselves, before the commencement of proceedings the disputant will make an oath to the court according to their religion that they will say nothing than the truth relating to the case presented in court, then the proceedings begins. Since there is no legal representation in customary courts and the chief will ask if the disputant has other evidences to support the claim. Questions will be asked from both parties to establish the facts, before the judgment.⁴⁶⁸ The study has established that the litigation processes in Africa are similar to modern court proceedings except that there is no legal representation, less expensive and accessible to grassroot people in Africa. Also the customary courts judges needs to be upgrade in some aspect of justice administration and dispensation to conform to the modern trend jurisprudential process.

The study has also revealed that European contact had negative effect on traditional administration of Oyo and Zulu, the structure of political administration adopted by the colonialists in Africa was planned to serve colonial interests. In many occasions contrary to the way in which Africans administered themselves.⁴⁶⁹ The study also revealed African traditional arrangement, authority was centered on kinship. Sovereignty to rule was needed from the people, without which governance would be unlawful. In colonising Africa, European powers tried to create their authority and mode of administration, and they removed and exiled many African traditional kings and chiefs, and replaced them with

⁴⁶⁸ O. Adewoye: *The Judicial System in Southern Nigeria 1854-1954* London: Longman Group Limited, 1977, P.119.

⁴⁶⁹ M. Fortes & E.E. Evans- Pritchard: *African Political System*. London: Oxford University Press, 1940, P. 198-205.

other individuals whom they felt they could control for instance in Zulu King Cetshwayo and Dinuzulu were deposed and exile and replaced with those who lacked the required traditional authority to command compliance and respect from the people. These were part of the effect of our contact with European powers in traditional politics in Africa.

The study has also find out that European contact having a great impact on the African culture and structures, however these does not lead to the complete destruction of African social, legal, economic and political cultures. All of these really affected the traditional structures, though they survived but severely weakened, the study therefore suggest that African should stand up to these challenges to promote their cultural heritage at the expense of westernization.⁴⁷⁰

The study revealed that traditional courts exist in almost every area of traditional leaders or chiefs in Oyo and Zulu, which means that virtually every village has a court within the reach of most inhabitants. People do not have to embark on long journey to magistrate's courts at district headquarters. The study find out that, availability of customary courts make justice nearer to the grassroot people. Since the presiding chief and his people who constitute the court are not very different in terms of social status, wealth or education, disputants do not feel as intimidated by the chief's court as they would in a modern type of court.

The study established that the power to appoint Presidents or judges, and members customary courts is vested in the Chief Justice acting on the recommendation of the Judicial Committee.' The powers of the Chief Justice include power to dismiss on the advice of the Judicial Committee.⁴⁷¹

The study also find out that in some state in Africa the power to appoint and dismissed a chiefs is vested on the supreme king which is contrary to customary law of succession in

⁴⁷⁰ O. G.J. Afolabi: Yoruba Culture. Ife Osun State. University of Ife and University of London Press Ltd, 1971, P. 123.

⁴⁷¹.Adewoye O., The Judicial System in Southern Nigeria 1854-1954 (London: Longman, 1977) Pp. 7-9.

Africa, and could leads to imposition of candidate and leads to conflict in the society.⁴⁷² However the study suggest that the appointment and removal of customary court judges should not be a king responsibility, this should be done by the judicial edict that established customary court board under the the supervision of the chief judge and the customary law of sucesion should be strictly adhere too.⁴⁷³

The research has established that justice dispensation in Oyo and Zulu native courts were based on merit, Communal involvement played a significant part in justice dispensation processes. All men present could take part in the court hearings and therefore there was communal involvement and the judgments handed down tried to maintain peaceful accord within the community.⁴⁷⁴ The court is open to anybody. The witnesses may give a useful information in the court, the chiefs may ask questions from the disputant or cross examine questions from the witnesses in other to base their judgment on merit and they must be fair to both parties.⁴⁷⁵ The study also examined conflict resolution in which the society may contribute jointly and cooperatively should not only be regarded as the heritage of the people's courts, but also a confirmation and continuation of the spirit of communitarianism and collectively underlying African customary law and social ordering.

The study revealed that customary courts verdict are respected in Africa especially Oyo and Zulu. Supreme Court of Nigeria views the nature of customary arbitration and other issues as a correct reassertion of the law and practice of customary adjudication in Nigeria as knownto the village communities that utilize the process as a dispute resolution

⁴⁷². Bennett, T.W. *The Natal Code of Zulu Law & the KwaZulu Act 16 of 1985 on the Code of Zulu Law*. South Africa: 2003, PP. 28-30.

⁴⁷³ .Rugege, S., "The future of traditional hereditary chieftaincy in Southern Africa: The case of Lesotho", in Santho and Sejanamane (eds) *Southern Africa after Apartheid: Prospects for the Inner Periphery*, SAPES Books, Harare, 1991, Pp.68-72.

⁴⁷⁴ . Koyana, D.S. *Customary Law in a Changing Society*. Cape Town: Juta, 1980, Pp.320-325.

⁴⁷⁵ .Van Niekerk, G.J. 'The Administration of Indigenous Criminal Law in Southern Africa- A Comparative Law Reform Study' in *De Jure*, 24(2) 1991 Pp.277-289

mechanism.⁴⁷⁶The old native courts edicts of Nigeria spelt out the type of punishment for contempt of customary courts within their jurisdiction in Oyo-Yoruba, the courts should have way of enforcing order for the people to honour the courts decisions and obey the customary courts verdict.

The study also find out that courts verdicts were valued in Zulu, traditional chief's court would not be real courts, if it did not have the power to ensure respect for and self-esteem of the proceedings of the court. In executing their lawful judicial functions, chiefs and headmen are entitled to the privileges of a court of law in respect of disobedience of their orders. The contempt of court attracts fine depending on the nature of the case and offence committed.⁴⁷⁷

The study has established that doctrine of separation of power exist in Oyo and Zulu, doctrine of separation of power is strictly observed in Africa, before the advent of the European power, the Alaafin, Oyomesi, Eso or Military, Eunuchs, Ogboni, and Ilari; while in Zulu we have the Isilo, Amakosi, Iziduna. The duties and functions of each chief were known to them, the idea came to being because the task of administration was cumbersome, and these duties will be performed by chiefs in their different territories. These were done in assisting the king in their daily administration. These brought about necessary checks and balances in Oyo Empire, and separation of powers in both empires⁴⁷⁸

⁴⁷⁶. Obilade, A.O. The Nigerian Legal System. Ibadan: Spectrum Law Publishing, 1979, P. 32

⁴⁶.The Chiefs Law, Cap 142, of the western Nigeria, Section 2. Pp38-41.

⁴⁷. Ajisafe, A.K. The Laws and Custom of the Yoruba People. Lagos: Kash and Klare Bookshop. 1946, Pp.80-84.

⁴⁷⁷. Constitutional Assembly Public Hearings on Traditional Authorities, Cape Town, 1995. P. 38.

⁴⁷⁸. Lloyd, P.C. Political & Social Structure in Biobaku, S.O. (ed) Sources of Yoruba History. Oxford: Clarendon Press, 1973, pp. 212-213.

The reseach revealed that there is separation of power in Zulu, since the task of administration is too cumbersome and the King cannot saddled with the responsibility of governance alone. The Inkosi of Matheni corroborated this views that king had to delegate duties and functions among his chiefs, The Isilo, Amokhosi, and Iziduna. The purpose of the separation doctrine of separation of power in Zulu was to make the act of governance effective and efficient, duties and functions was divided among the chiefs in daily administration, since the government rely on the help of traditional chiefs in the grassroot administration.

Finally the study identified many factors that can enhanced fiar processes in customary courts justice delivery in Africa and Oyo and Zulu in particular, these are fair process in judicial and litigation process, upgrading of customary court judges and they should be well remunerated, there should be deligation of duties among the customary courts personnel. Lastly, the customary courts justice should be executed without been prejudice or bias, the verdict should be acceptable to disputant, and peace should be finally restored.

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Appendix I

INTERVIEW SHEET

Interview to Access Information on comparative Study of Justice Dispensation in Oyo and
Zulu Traditional administrative Structures

Department of History, University of Zululand.

Private Mail Bag X1001,

KwaDlangezwa,

South Africa.

Interview initiated and completed at: _____

Interview with: _____

Interview Date: _____

This interview is in respect of a study whose purpose is to explore and access information on Comparative Study of Justice Dispensation in Oyo and Zulu Traditional Administrative Structures.

This study is to be conducted by Ayobami Olutayo, Ajayi of the History Department, Faculty of Arts, University of Zululand. Mr Ajayi is conducting this research towards a Ph.D Programme. Thus, responses to this interview will help in providing adequate information on the subject matter.

I kindly request your time to complete this interview because you are a citizen / residence in the area of the study (Kwa-Zulu Natal, South Africa and Yoruba in western Nigeria). Your response will be taken as a contribution to this research success and it is voluntarily. Swiftly return the interview sheet. I assure that information provided will be kept confidential, and will not affect your current or future relations with the researcher.

Response to the questions will be of great help to identify some tedious areas, besides giving you the opportunity to state your opinions.

Please treat all the questions objectively and to the best of your knowledge and be rest assured that all the information you give will be confidential. Note, however, that there are no rights or wrong answers. The study is only interested in your opinions.

Before we begin do you have any questions?

Thanking you in advance for your time,

Yours Sincerely,

Ayobami .O. Ajayi.

Researcher / Ph.D Student. 0716661094.

SECTION: A

1. Province of Origin:

2. Province of Residence: _____
3. Area of Residence: _____
4. Sex: Male Fema
5. How old are you? _____
6. What is your highest formal education attained?
 - a) Primary School
 - b) High School
 - c) College
 - d) University

e) Other Specify: _____

SECTION B:

Instruction: Fill your answers in the lines provided below and kindly respond to the one applicable to you.

1. Do you believe that tracing the origin of Oyo and Zulu will give us background knowledge of their _____ judicial processes? _____

2. Can you tell us how courts operate in Oyo or Zulu Empires?

3. Traditional Courts in Oyo or Zulu were headed by whom?

4. Who was the head of the administration in Oyo or Zulu Empires?

5. Briefly explain court administration in Oyo or Zulu to us?

6. How can you discuss litigation process in Oyo or Zulu traditional administration?

7. Do they have any judiciary structure in place?

8. What are the roles of chiefs in courts?

9. Are there differences in judiciary and kingship functions?

10. What are the relevance of judiciary systems of both empires to the study?

11. Who are the heads of traditional judiciary of both empires?

12. How are they settling disputes?

13. What are the modes of punishment or penalty to those who violate the law of the land?

14. Are there any procedures for appointing the judge in customary courts?

15. Who is the head of traditional administrative structures of both empires?

16. What are the responsibilities of the chiefs of both empires?

17. How are kings administering the people of both empires?

18. What are the roles of traditional rulers in modern democratic government?

19. Was there any way in which European influence in Oyo or Zulu affects justice dispensation in both Empires?

20. Does the king have supreme power over court judgment?

21. Is there any way in which traditional ruler can influence judgment?

21. How can traditional culture be preserved in the present generation?

22. What are the consequences of not preserving traditional culture or values of the society?

23. Do the people see traditional courts as the hope of the common people?

24. Is there any provision for people to appeal in the traditional court?

25. What are the procedures for the appeal?

QUESTIONNAIRE

This questionnaire is to Access Information on Justice Dispensation in Oyo and Zulu
Traditional Administrative Structures.

Department of History, University of Zululand.

Private Mail Bag X1001,

KwaDlangezwa,

South Africa.

Questionnaire initiated at: _____

Questionnaire completed at: _____

Date: _____

This questionnaire is in respect of a study whose purpose is to explore and access information on Justice Dispensation in Yoruba and Zulu Traditional Administrative Structures.

This study is to be conducted by Ayobami Olutayo, Ajayi of the History Department, Faculty of Arts at the University of Zululand. Mr. Ajayi is conducting this research towards a Ph.D Programme. Thus, responses to this interview will help in providing adequate information on the subject matter.

I kindly request your time to complete this interview because you are a citizen / residence in the area of the study (Kwa-Zulu Natal, South Africa and Yoruba in western Nigeria). Your response will be taken as a contribution to this research success. Kindly return the interview sheet. I assure that information provided will be kept confidential, and will not affect your current or future relations with the researcher. Response to the questions will be of great help to identify some tedious areas, besides giving you the opportunity to state your opinions.

Please treat all the questions objectively and to the best of your knowledge and be rest assured that all the information you give will be confidential. Note, however, that there are no rights or wrong answers. The study is only interested in your opinions.

Before we begin do you have any questions?

Thanking you in advance for your time,

Yours Sincerely,

.....

Ayobami .O. Ajayi.

Researcher / Ph.D Student. 071 6661094.

SECTION A:

1. Province of Origin: _____
2. Province of Residence: _____
3. Area of Residence: _____
4. Sex: Ma Fem
5. How old are you? _____
6. What is your highest formal education attained?
 - a) Primary School
 - b) High School
 - c) College
 - d) University
 - e) Other Specify: _____
7. What is your present occupation?
 - a) Farming
 - b) Civil Servant
 - c) Trading
 - d) Business men / women

e) Others Specify: _____

8. What is your marital status?

- a) Married
- b) Single
- c) Divorce
- d) Widow
- e) widower

SECTION B:

1. Does the historical background of Oyo or Zulu have any impact on judicial matter?

- a. Yes
- b. No
- c. Not so sure
- d. Not at all

2. Are there separations of powers in traditional administration?

- a. Yes
- b. No
- c. Not so sure
- d. Not at all

3. Who were the founders of Oyo and Zulu Empires?

- a. Yes
- b. No
- c. Not so sure
- d. Not at all

4. Is is the king head of traditional administration?

- a. Yes
- b. No

- c. Not so sure
 - d. Not at all
5. How can the customary court be dissolved?
- a. Through King
 - b. Through Chief Judge
 - c. Not so sure
 - d. Not at all
6. Do you agree that the King is the head of judiciary in Oyo or Zulu?
- a. Yes
 - b. No
 - c. Not so sure
 - d. Not at all
7. Does the King delegate traditional judicial matters to the Chiefs?
- a. Yes
 - b. No
 - c. Not sure
 - d. Not at all
8. Did Oyo or Zulu Empires practise centralised system of government?
- a. Yes
 - b. No
 - c. Not so sure
 - d. Not at all
9. The compositions of court were made up of what, list them.

10. Do customary courts have jurisdiction in their operation?

- a. Yes
- b. No
- c. Not so sure
- d. Not at all

11. Are accusatory processes in traditional court duly followed?

- a. Yes
- b. No
- c. Not so sure
- d. Not at all

12. Do you agree that customary court is the hope of the common people?

- a. Yes
- b. NO
- c. Not so sure
- d. Not at all

If yes, explain

13. Customary court system can not be influenced by the king

- a. Yes
- b. No
- c. Not so sure
- d. Not at all

If your answer is yes, how

14. Are the Yoruba or Zulu traditional culture dying gradually?

- a. Yes
- b. No
- c. Not so sure
- d. Not at all

15. Are we practicing our culture?

- a. Yes
- b. No
- c. Not so sure
- d. Not at all

If your answer is no, why?

16. Do the foreign influences have effect on our judicial administration?

- a. Yes
- b. No

- c. Not so sure
- d. Not at all

If yes, give reasons

17. Are the king's paramount ruler in Oyo or Zulu?

- a. Yes
- b. No
- c. Not so sure
- d. Not at all

18. Does the traditional judicial systems in Oyo or Zulu have independence?

- a. Yes
- b. No
- c. Not so sure
- d. Not at all

19. Do you think separation of power exists in Oyo or Zulu administration?

- a. Yes
- b. No
- c. Not so sure
- d. Not at all

20. Do people have fair process in the dispensation of justice?

- a. Yes
- b. No
- c. Not so sure
- d. Not at all

21. Are there judges in the traditional court?

- a. Yes
- b. No
- c. Not so sure
- d. Not at all

22. Are the appointments of chiefs and judge in the traditional courts made on merit?

- a. Yes
- b. No
- c. Not so sure
- d. Not at all

23. Can the King remove courts judges in traditional administration?

- a. Yes
- b. No
- c. Not so sure
- d. Not at all

If your answer is yes or no give reason

24. Do they dispense law in traditional court?

- a. Yes
- b. No
- c. Not so sure
- d. Not at all

If your answer is no or yes, give reasons

Appendix II

Yoruba / Zulu Versions of Interviews and Questionnaires

Iwe iforo wani lenu wo

Iforo wani lenu wo lati gba oro nipa sise eto Idajo ni Ile Ejo Ibile ni Ilu Oyo, ni Orile ede Nigeria, ati ni Ilu Zulu ni KwaZulu-Natal, South Africa ati bi ase se amojuto Ilu.

Eka Eko Itan

Ile Iwe Giga Agba ti Zululand

Apo Ifiwe Ranse X1001,

KwaDlangezwa, South Africa.

Ibere ati Ipari Iforo wani lenu wo ni _____

Iforo wani lenu wo pelu _____

Ojo Iforo wani lenu wo _____

Iforo wani lenu wo yi wa fun lati bere ibere lori sise Idajo ni Ile Ejo Ibile ati bi awon Oba se nse amojuto Ijoba Ilu ni Oyo, Yoruba ni Orile ede Nigeria ati ni Zulu, KwaZulu-Natal, South Africa

Oruko akeko to nwa imo lori ise yi ni Ayobami Olutayo AJAYI ti Department of History, Faculty of Arts, University of Zululand. Ogbeni Ajayi nwa imo kun imo lati di Omowe ninu ise Itan, idahun si ibere yin yo je kamo imo ijinle lori akole ise yi.

Mo bebe lati gba asiko yin die, fun iforo wani lenu wo, nitori omo bibi Ilu Oyo niyin, Oyo Yoruba ni Orile ede Nigeria. Idahun yin yo ran ase yori ise yi lowo. Ejowo etete da idahun yin pada, gbg\bo idahun yin ni yo je asiri, yo si ran awon ibi to ta koko lori ise yi lowo, lori awon ero okan yin tie so.

Ejowo, eje olotito lori awon idahun yin, ki esi fi okan bale wipe gbogbo idahun yin ni ao se ni asiri. Mo si fe ki emo daju wipe gbogbo ohun ti eba so ni yo wulo fun wa.

Ki ato bere, ije eni ibere

Mo dupe fun akoko yin

Emi nit i yin ni toto

.....

Ajayi, Ayobami Olutayo

Apa kini

(1) Ipinle ti ati biyin _____

(2) Ipinle ti a ngbe _____

(3) Adugbo ibi ti ngbe _____

(4) Okunrin _____ Obinrin _____

(5) Omo odun melon i yin _____

(6) Iwe melo ni eka _____

(a) Ile iwe alokobare _____

(b) Ile iwe girama _____

(c) Ile iwe awon Oluko _____ Gbogbo nise _____

(d) Ile iwe giga _____

(e) Tabi Omiran _____

(7) Ise wo ni e nse lowo _____

(8) Se e ti gbe Iyawo tabi Oko _____

(a) Se Apon Niyin _____

(b) Moti ko Iyawo tabi Oko sile _____

(c) Opo Binrin _____

(d) Opo Kurin _____

Apa Keji

Ibeere

1. Se itan Ilu Oyo le ni nkan se pelu eto idajo tabi kootu Ibile?

- a. Beni
- b. Beko
- c. Ko daju
- d. Ko daju rara

1. Unje aya eka iselu ninu Ijoba Ibile ti awon llobaloba?

- a. Beni
- b. Beko
- c. Ko daju
- d. Ko daju rara

2. Tani o da Ilu Oyo sile?

- a. Oranmiyan
- b. Ladigbolu
- c. Ko daju
- d. Ko daju rara

3. Se Oba ni Olori eto ati mumu oju to Ilu?

- a. Beni
- b. Beko

- c. Ko daju
 - d. Ko daju rara
4. Unje Oba le tu igbimo awon Ile Ejo tabi Kootu Ibile ka?
- a. Beni
 - b. Beko
 - c. Ko daju
 - d. Ko daju rara
5. Se o gbagbo pe Oba ni Olori eka ejo ni Ilu Oyo?
- a. Beni
 - b. Beko
 - c. Ko daju
 - d. Ko daju rara
6. Iru eto Ijoba wo nigba ijoba awon loba ni Oyo Nse?
- a.
 - b.
 - c. Ko ye mi
 - d. Ko ye mi rara
7. Se Oba gbe eka idajo le awon Oloye lowo?
- a. Beni
 - b. Beko
 - c. Ko daju
 - d. Ko daju rara
8. Awon wo lowa ninu eto eka Idajo ni Ijoba tabi Kootu Ibile?
- a.
 - b.
 - c. Ko ye mi
 - d. Ko ye mi rara
9. Se Ile ejo tabi kootu ibile ni agbegbe ibi ti won ni abgara de?

- a. Beni
- b. Beko
- c. Ko ye mi
- d. Ko ye mi rara

10. Unje igbese bi ase fi esun kan yan wa ni ile ejo tabi kootu ibile?

- a. Beni
- b. Beko
- c. Ko daju
- d. Ko daju rara

11. Se ile ejo tabi kootu ibile ni ireti awon mekunu

- a. Beni
- b. Beko
- c. Ko ye mi
- d. Ko ye mi rara

12. Unje o ye ki Oba ma gbe fun idajo no kootu Ibile?

- a. Beni
- b. Beko
- c. Mi mo
- d. Mi mo rara

13. Ose se ki asa wa ti ma parun die die?

- a. Beni
- b. Beko
- c. Ko ye mi
- d. Ko ye mi rara

14. Se a un mo ju to asa wa?

- a. Beni
- b. Beko
- c. Ko daju

- d. Ko daju rara
15. Unje ijoba awon alawo funfun da si eka eto idajo tabi kootu ibile?
- a. Beni
 - b. Beko
 - c. Ko daju
 - d. Ko daju rara
16. Se Oba ni alase lori ohun gbogbo?
- a. Beni
 - b. Beko
 - c. Ko daju
 - d. Ko daju rara
17. Unje eto idajo tabi kootu ibile ni Ominira tabi labe awon Oba lowa?
- a. Beni
 - b. Beko
 - c. Ko daju
 - d. Ko daju rara
18. Se o lero wipe ijoba eleka si eka waye ni ilu Oyo?
- a. Beni
 - b. Beko
 - c. Ko daju
 - d. Ko daju rara
19. Unje awon eniyan nri Idajo ododo gba kootu ibile?
- a. Beni
 - b. Beko
 - c. Ko daju
 - d. Ko daju rara
20. Se adajo wan i ile ejo tabi kootu ibile?
- a. Beni

- b. Beko
- c. Ko daju
- d. Ko daju rara

21. Unje Ona ti won fi yan awon adajo Kootu Ibile to na?

- a. Beni
- b. Beko
- c. Ko ye mi
- d. Ko ye mi rara

22. Se Oba le yo adajo kootu Ibile?

- a. Beni
- b. Beko
- c. Ko ye mi
- d. Ko ye mi rara

23. Unje won dajo ni Kootu Ibile?

- a. Beni
- b. Beko
- c. Ko ye
- d. Ko ye rara

Ibeere

Ibeere yi wa fun lati se alaye lori eto idajo ni ile ejo Ibile ati Isa koso Ilu ni Oyo ati Zulu ni aye atijo.

Eka Eto Eko Itan,

Ile iwe Giga agba ti Zululand.

Apo ifiwe ranse X1001,

KwaDlencezwa,

South Africa.

Didahun Ibere ni _____

Pipari Ibere ni _____

Ojo Idahun Ibere _____

Awon ibere yi duro lori ati se iwadi lori bi a se ni se idajo ni kotu ibile ati isakoso ilu ati awon eka re. Oruko akeko to nwa imo lori ise yi ni Ayobami Olutayo AJAYI ni Ile eko giga. Ni eka itan, Faculty of Arts University of Zululand. Ogbeni Ajayi, nwa imo kun imo lati di omowe nini ise itan. Idahun si ibere yiyo je ki amo imo ijinle lori akole yi.

Mo bebe lati gba asiko yin die, fun iforo wani lenu wo, nitori omo bibi Ilu Oyo niyin, OyoYoruba ni Orile ede Nigeria. Idahun yin yo ran ase yori ise yi lowo. Ejowo etete da idahun yin pada, gbg\bo idahun yin ni yo je asiri, yo si ran awon ibi to ta koko lori ise yi lowo, lori awon ero okan yin tie so.

Ejowo, eje olotito lori awon idahun yin, ki esi fi okan bale wipe gbogbo idahun yin ni ao se ni asiri. Mo si fe ki emo daju wipe gbogbo ohun ti eba so ni yo wulo fun wa.

Ki ato bere, ije eni ibere

Mo dupe fun akoko yin

Emi ni tiyin ni tooto

.....

Ajayi, Ayobami Olutayo.

Apa kini

(1) Ipinle ti ati biyin _____

(2) Ipinle ti a ngbe _____

(3) Adugbo ibi ti ngbe _____

(4) Okunrin _____ Obinrin _____

(5) Omo odun melon i yin _____

(6) Iwe melo ni eka _____

(a) Ile iwe alokobare _____

(b) Ile iwe girama _____

(c) Ile iwe awon Oluko _____ Gbogbo nise _____

(d) Ile iwe giga _____

(e) Tabi Omiran _____

(7) Ise wo ni e nse lowo _____

(8) Se e ti gbe Iyawo tabi Oko _____

(a) Se apon niyin _____

(b) Moti ko Iyawo tabi Oko sile _____

(c) Opo Binrin _____

(d) Opo Kurin _____

APA KEJI

1. Se itan bi won se da Oyo sile ni se pelu eto idajo no kootu ibile?

- a. Beni
- b. Beko
- c. Ko daju
- d. Ko daju rara

2. Se eto bi aes nse ijoba ni eleka si eka wa ni ijoba ibele ni aye atijo?

- a. Beni

- b. Beko
- c. Ko daju
- d. Ko daju rara

3. Tani o da Oyo sile?

- a. Aremo
- b. Alaafin
- c. Oranmiyan
- d. Okanbi

4. Se Oba ni olori ise ijoba ibile?

- a. Beni
- b. Beko
- c. Ko daju
- d. Ko daju rara

5. Se Oba le tu ijoko awon kootu ibile ka?

- a. Beni
- b. Beko
- c. Ko daju
- d. Ko daju rara

6. Se o gbagbo wipe Oba ni olori eto idajo ibile ni ilu Oyo?

- a. Beni
- b. Beko
- c. Ko daju
- d. Ko daju rara

7. Unje Oba le so wipe ki awon ijoye Ibile ma se amojuto eto idajo ibile?

- a. Beni
- b. Beko
- c. Ko daju
- d. Ko daju rara

8. Unje won se eto ijoba alase lati odo Oba si awon ara ilu ni Oyo-Ile?

- a. Beni
- b. Beko
- c. Ko daju
- d. Ko daju rara.

9. Daruko awon igbimo alakoso kootu ibile?

10. Unje kootu ibile ni agbara no ori eto akoso ati idajo ti won nse?

- a. Beni
- b. Beko
- c. Ko daju
- d. Ko daju rara

11. Se eto wa fun fifi esun iwa buruku kan eniyan ni kootu ibile?

- a. Beni
- b. Beko
- c. Ko daju

d. Ko daju rara.

12. Unje ofi aramo wipe kootu ibile ni ireti awon mekunu?

a. Beni

b. Beko

c. Ko daju

d. Ko daju rara.

13. Awon Oba le lo ipo re lati da eto idajo ododo ru ni ile ejo ibile?

a. Beni

b. Beko

c. Ko daju

d. Ko daju rara

14. Unje Asa ati Ise ile Yoruba tin pare lo?

a. Beni

b. Beko

c. Ko aju

d. Ko daju rara

15. Se a nmu ojuto awon asa wa?

a. Beni

b. Beko

c. Ko daju

d. Ko daju rara

16. Asa awon alawo funfun se ko je akoba fun eto amojuto idajo ibile?

- a. Beni
- b. Beko
- c. Ko daju
- d. Ko daju rara

To baje beni se alaye

17. Oba je olori to lagbara julo lori Ilu ti awon eniyan ibe?

- a. Beni
- b. Beko
- c. Ko daju
- d. Ko daju rara

18. Unje eto idajo ibile ni ominira ni ilu Oyo?

- a. Beni
- b. Beko
- c. Ko daju
- d. Ko daju rara

19. Se eto itolu ijoba eleka jeka sele ri ni igba atijo ni Ilu Oyo?

- a. Beni
- b. Beko

- c.Ko daju
- d.Ko daju rara

20.Unje eto idajo otito wa ni kootu ibile?

- a.Beni
- b. Beko
- c.Ko daju
- d. Ko daju rara

21.Se awon adajo wa ni kootu ibile?

- a.Beni
- b. Beko
- c.Ko daju
- d. Ko daju rara

22.Bi won se nyan awon adajo ni kootu ibile unje liana otito wa nibe?

- a.Beni
- b. Beko
- c.Ko daju
- d. Ko daju rara

23.Unje Oba le yo Adajo ni Ile ejo ibile?

- a.Beni
- b. Beko
- c.Ko daju

d. Ko daju rara

24. Se won se idajo otito to tea won eniyan lorun ni kootu ibile?

a. Beni

b. Beko

c. Ko daju

d. Ko daju rara

Ti idahun re ba je beni tabi beko se alaye

APPENDIX III
AMAPHEPHA ENHLOLOLWAZI NOTHILE

Inhlololwazi imayelana nokuthola ulwazi olunokuqhathanisa isifundo sokuqhathanisa umkhakha woBulungiswa we-Oyo nesiZulu ezinhlakeni zokuphatha zomdabu.

Umnyango Wezomlando, eNyuvesi yaKwaZulu.

Private Bag X1001 Mail,

KwaDlangezwa,

Iningizimu Afrika.

Inhlololwazi iqalwe yaphethwa nini:

Inhlololwazi ibiqhutshwa no

Le hlololwazi imaqondana nesifundo injongo yasoewukuhlola kanye nokufinyelela elwaini olunokuqhathanisa umkhakha woBulungiswa we-Oyo nesiZulu ezinhlakeni zouphepha zomdabu.

Lolu cwaningo luzosingathwa ngu-Ayobami Olutayo Ajayi ovela eMnyangweni Wezomlando eNyuvesi yakwaZulu. Umnu. Ajayi wenza lolu cwaningo ukufeza izifundo zobuDokotela kwezomlando. Ngakho, izimpendulo zale ngxoxozizosiza ekunikezeni ulwazi okunzulu mayelana nodaba.

Bengicela isikhathi sakho sokugcwalisa le ngxoxo ngoba uyisakhamuzi/uhlala endaweni yocwaningo (Kwa-Zulu Natal eNingizimu Afrika kanye namaYoruba eNtshonalanga yeNigeria). Ukuphendula kwakho kuyothathwa njengomnikelo oya

kulolucwaningo futhi kuba ngokuzithandela. Ngicela ungibuyisele iphepha lenhlololwazi ngokushesha. Ngiyaqinisekisa ukuthi ulwazi olunikezele luzogcinwa luyimfihlo, futhi angeke luthinte ubudlelwane bakho nomcwaningi kusukela manje noma esikhathini esizayo. Zonke izimpendulo nemibuzo kuyoba usizo olukhulu ukuhlonza ezinye izindawo ezinobucayi, futhi uzonikezwa ithuba lokubeka imibono yakho.

Sicela uthathe yonke imibuzo ngomqondo ovulekile futhi unikezele ngolwazi lwakho oluphelele, futhi uyaqinisekiswa ukuthi konke okwazisile kuyoba imfihlo. Uqaphele kodwa ukuthi azikho izimpendulo ezinhle nezimbi. Ucwanningo luphokophelele ukuthola imibono yakho kuphela nje.

Siyafisa ukuzwa ngaphambi kokuqalisa ukuthi ingabe unayo yini imibuzo?

Sikuhambela phambili ngokubonga ngesikhathi sakho,
Ozithobayo,

Ayobami O. Ajayi.

Umcwaningi / Ph.D Student.

Inombolo yocilongo: 0731632686.

ISIQEPHU A

1. Isifundazwe ovela kuso: _____

2. Isifundazwe ohlala kuso: _____

3. Indawo ohlala kuyo: _____

4. Ubulili: Owesilisa..... Owesifazane.....

5. Uneminyaka emingaki? _____

6. Iyiphi imfundo ephakeme yasesikoleni owakwaziukufinyelela kuyo?

a) Isikole samabanga aphantsi

b) Isikole samabanga aphezulu

c) Ikolishi

d) Inyuvesi

e) Okunye, cacisa: _____

7. Yimuphi umsebenzi owenzayo okwamanje?

a) ukulima

b) Isisebenzi sikahulumeni

c) Ukuhweba

d) Business amadoda / nabesifazane

e) Okunye, cacisa: _____

8. Isimo sakho somshado?

a) Ushadile

- b) Angishadile
- c) Usesahlukanisweni
- d) Ungumfelokazi
- e) ungumfelwa

ISIQEPHU B:

Ukufundiswa: Gcwalisa izimpendulo zakho emigqeni ehlinzekwe ngezansi futhi sicela uphendule lowo ophathelene nawe.

1. Ingabe uyakholelwa ukuthi ukucubungulwa kwemvelaphi yesizwe sama-Oyo namaZulu kuyosinika ulwazi ngenqubo yezobulungiswa nezomthetho kwabo na?

2. Ungasitshela yini ukuthi izinkantolo zobukhosi bama-Oyo namaZulu zazisebenza kanjani?

3. Izinkantolo Zendabuko zama-Oyo namaZulu zaziphathwa ngubani?

4. Ubani woayeyinhloko yokuphathwakwemibuso yama-Oyo namaZulu Empires?

5. Chaza ngamafuphi ngokuphathwa kwezinkantolo e-Oyo nezesiZulu.

6. Awuxoxe ngohlelo lokuphathwa kwamacala e-Oyo nawesiZulu ngokwendabuko?

7. Ingabe banaso yini isakhiwo sesigungu sabehluleli na?

8. Liyini iqhaza lamakhosi ezinkantolo?

9. Ukhona umehluko ekusebenzeni kwezinkantolo zomthetho kanye nemikhandlu yobukhosina?

10. Kuyini ukuhambisana komthetho wobulungiswa kobukhosi bobubili (e-Oyo nobuZulu) kulesi sifundo na?

11. Obani abayizinhloko zezinkantolo zamajaji ebukhosini bokubili?

12. Bazixazulula kanjani izingxabano?

13. Yiziphi izindlela zokujezisa noma inhlawulo labo abephula umthetho ezweni?

14. Ingabe ikhona izinqubo lokuqoka umehluleli enkantolo yendabuko?

15. Ubani oyinhloko yezokuphatha ezakhiweni zendabuko kule mibuso yomibili?

16. Iyini imisebenzi yamakhosi kubona bobubili ubukhosi?

17. Amakhosi abaphatha kanjani abantu bayo yomibili le mibuso?

18. Yimiphi imisebenzi eyenziwa ababusi bendabuko kuhulumeni wanamuhla wentando yabantu?

19. Ingabe ikhona indlela lapho ulwazi lwaseYurophu lwaba nomthelela ekuphathweni kobulungiswa bobukhosi baseOyo naKwaZulu?

20. Ingabe inkosi inamandla angaphezu kwesinqumo senkantolo yamajaji?

21. Ingabe ikhona indlela lapho umbusi yendabuko angakwazi ukuthonya isinqumo senkantolo?

22. lingalondolozwa kanjani isiko lendabuko esizukulwaneni sanamuhla?

23. Iyini imiphumela yokungalondolozwa kwesiko namagugu omphakathi?

24. Abantu babona izinkantolo zendabuko ziyithemba labantu phaqa?

25. Ingabe lukhona yini uhlelo lokwedluliswa kwamacala enkantolo yendabuko?

26. Yimiphi imigudu yokwedluliswa kwamacala na?

IPHEPHAMBUZO

Lolu hla lwemibuzo olokuthola ulwazi ngokuphathwa kwezobulungiswa e-Oyo
nohlelo lwendabuko lwesiZulu

UMnyango Wezomlando,

eNyuvesi yaKwaZulu.

Private Bag X1001,

KwaDlangezwa,

Uhlu lwemibuzo luqalwe kuphi: _____

Uhlu lwemibuzo lwaqedelwa kuphi:

Usuku:

–

Loluhlu lwemibuzo lumaqondana nesifundo somlando onjongo yaso kuwukuhlola kanye nokuthola ulwazi nge Justice Dispensation e Oyo neSiZulu Traditional Administrative structures.

Lolu cwaningo luqhutshwe nguMnumzane Ayobami Olutayo, Ajayi emnyangweni wezoMlando, eNyuvesi yaKwaZulu, UMnumzane Ajayi oqhuba lolu cwaningo ezifundweni zobuDokotela kwezoMlando. Ngakho, izimpendulo kule nhlololwazi zizosiza ekunikezeni ulwazi olwanele mayelana nodaba olumqoka.

Ngithanda ukucela isikhathi sakho ukuqedela lenhlololwazi ngoba uyisakhamuzi esihlala endaweni yocwaningo (Kwa-Zulu Natali, South Africa kanye namaYoruba entshonalanga yeNigeria). Izimpendulo zakho ziyothathwa njengomnikelo oya kulolucwaningo zilwenze lube impumelelo. Ngicela ulubuyisele emuva loluhlu lwenhlolokhono. Ngियाqinisekisa ukuthi ulwazi olunikezile luzogcinwa luyimfihlo futhi angeke luthinte ubudlelwane bakho bamanje noma obesikhathi esizayo

nomcwaningi. Izimpendulo nemibuzo kuyoba usizo olukhulu ekubhekeni ezinye zezindawo ezinohlonze, ngaphandle kokudalula imibono yakho.

Sicela uthathe yonke imibuzo ngomqondo ovulekile futhi unikeze ulwazi lwakho olunqala ukuqiniseka ukuthi konke okushilo kuyoba imfihlo. Qaphela kodwa ukuthi azikho izimpendulo ezinhle nezimbi. Ucwaningo luphokophelele ukuthola imibono yakho nje kuphela.

Ngaphambi kokuba siqale, siyafisa ukuzwa ukuthi ingabe unayo yini imibuzo ngalokhu esisakuxoxiule?

Ngiyabonga ngesikhathi sakho

Ozithobayo,

Ayobami .O. Ajayi

Umcwaningi wobuDokotela / Ph.D Student, 0731632686.

ISIQEPHU A:

1. Isifundazwe ozalelwe kuso: _____
2. Isifundazweni ohlala kuso: _____
3. Indawo ohlala kuyo: _____
4. Ubulili: Owesilisa _____
Owesifazane _____
5. Uneminyaka emingaki? _____
6. Iyiphi imfundo ephezulu yakho yasesikoleni osuyizuzile?
 - a) Isikole samabanga aphansi
 - b) Isikole samabanga aphezulu
 - c) Ikolishi,
 - d) Inyuvesi

e) Okunye, chaza: _____

7. Usebenza kuphi manje?

a) Ukulima.....

b) Isisebenzi sikahulumeni.....

c) Ukuhweba

d) Usebhizinisini; uyisilisa/uyisifazane

e) Okunye, chaza:

4. Sinjani isimo sakho somshado?

a) Ushadile.....

b) Awushadile.....

c) Isehlukano

d) Ungumfelokazi

e) ungumfelwa

ISIQEPHU B:

1. Ingabe inqubo yakudala yase-Oyo neyaKwazulu inomthelela enqubeni yobulungiswa yamanje?

a. Yebo

b. Chabo

c. Anginasiqiniseko

d. Lutho neze

2. Ngabe kukhona yini ukuhlukana kwamandla ngaphansi kwamakhosi?

a. Yebo

b. Chabo

c. Anginasiqiniseko ngakho

d. Lutho neze

3. Ngobani abasunguli besizwe sama -Oyo nesamaZulu?

- a. Yebo.....
- b. Chabo.....
- c. Anginasiqiniseko ngakho

d. Lutho neze

4. Ingabe ikhanda iNkosi yokuphathwa yendabuko?

- a. Yebo
- b. Chabo
- c. Anginasiqiniseko ngakho
- d. Lutho neze

5. Ngabe inkosi ingakwazi ukuhlakaza amalungu enkantolo yendabuko?

- a. Yebo
- b. Chabo
- c. Anginasiqiniseko ngakho

d. Lutho neze

6. Ingabe uyavuma ukuthi inkosi wayeyinhloko yamajaji Oyo nesiZulu?

- a. Yebo
- b. Chabo
- c. Anginasiqiniseko ngakho

d. Lutho neze

7. Ingabe isilosiyawedlulisa yini amandla okuphatha emakhosini?

- a. Yebo

- b. Chabo
- c. Anginasiqiniseko ngakho
- d. Lutho neze

8. imibuso yase-Oyo nowakwaZulu yayilusebenzisa yini uhlelo lomhlabuhlangene?

- a. Yebo
- b. Chabo
- c. Anginasiqiniseko ngakho

d. Lutho neze

9. Izakhiwo zezinkantolo zazihlanganiseni, zibale.

10. Ingabe izinkantolo zendabuko zisebenza ngemingcele yini?

- a. Yebo
- b. Chabo
- c. Anginasiqiniseko ngakho
- d. Lutho neze

11. Ingabe inqubo yokumangala enkantolo yendabuko ilandelwa ngokufanele?

- a. Yebo
- b. Chabo
- c. Anginasiqiniseko ngakho

d. Lutho neze

12. Ingabe uyavuma ukuthi inkantolo yendabuko iyithemba labantu phaqa?

a. Yebo

b. Chabo

c. Anginasiqiniseko ngakho

d. Lutho neze Umayebo, chaza

13. Inqubo yenkantolo yesintu angeke iguqulwe yisilo

a. Yebo

b. Chabo

c. Anginasiqiniseko ngakho

d. Lutho neze Uma impendulo yakho kungu-yebo nikeza isizathu

14. Kungabe isiko lesiYoruba nesiZulu liyafa kancane kancane?

a. Yebo

b. Chabo

c. Anginasiqiniseko ngakho

d. Lutho neze _____

15. Ingabe sisawagcina amasiko ethu?

a. Yebo

b. Chabo

c. Anginasiqiniseko ngakho

d. Lutho neze Uma impendulo yakho ingu-cha, kungani?

16. Ingabe izimfundiso zangaphandle zinomthelela ekuphathweni kwezobulungiswa?

a. Yebo

b. Chabo

c. Anginasiqiniseko ngakho

d. Lutho neze Uma yebo, nika izizathu

17. Kungabe isilo yisona umbusi omkhulu kwelaseOyo naKwaZulu?

a. Yebo

b. Chabo

c. Anginasiqiniseko ngakho

d. Lutho neze

18. Ingabe imibuso yendabuko yase-Oyo naKwZulu inakho ukuzimela?

- a. Yebo
- b. Chabo
- c. Anginasiqiniseko ngakho
- d. Lutho neze

19. Ingabe ucabanga ukuthi kukhona ukwahlukana kwamandla e-Oyo naKwaZulu?

- a. Yebo
- b. Chabo
- c. Anginasiqiniseko ngakho
- d. Lutho neze

20. Ingabe abantu bayafinyelela ebulungisweni ngaphansi kwenqubo yobulungiswa?

- a. Yebo
- b. Chabo
- c. Anginasiqiniseko ngakho
- d. Lutho neze

21. Ingabe kukhona abahluleli enkantolo yendabuko?

- a. Yebo
- b. Chabo
- c. Anginasiqiniseko ngakho
- d. Lutho neze

22. Kungabe ukuqokwa kwamakhosi nabahluleli enkantolo yendabuko kwenziwa ngokufaneleka?

- a. Yebo
- b. Chabo

c. Anginasiqiniseko ngakho

d. Lutho neze

23. Isilo singakwazi yini ukususa isinqumo senkantolo yendabuko?

a. Yebo

b. Chabo

c. Anginasiqiniseko ngakho

d. Lutho neze Uma impendulo yakho inguyebo noma kungekho sizathu Sinike

24. Ingabe bayawusabalalisa yini umthetho enkantolo yendabuko?

a. Yebo

b. Chabo

c. Anginasiqiniseko ngakho

d. Lutho neze,uma impendulo yakho ingu-cha noma yebo, nika izizathu

Appendix IV



Group photograph of Oyomesi of Oyo land during the field interview



Photograph with Laguna of Oyo after the interview



Photograph with Basorun of Oyo after interview



Photograph with Samu of Oyo during the interview



Photograph with Oloja of Ago Oja during the interview



Group photograph with the traditional chiefs at Matheni traditional council



Photograph with traditional chiefs in Matheni traditional council



Photograph with inkosi Bhekintinta Zulu during interview



Photograph with traditional chiefs after interview at mandlakazi traditional Council



Photograph with traditional chiefs after interview at Mandlakazi Traditional Council, Nongoma.



Photograph with traditional chiefs in their office at Mandlakazi traditional Council, Nongoma.



Photograph of Mr. Mbatha, P. and traditional chiefs at Mandlakazi traditional council



Photograph of Mr. Mbatha, P.the interpreter and Inkosi bhekintinta Zulu after interview

Appendix v

Turnitin Originality Report



*A Comparative Study of
Justice Dispensation in Oyo
and Zulu Traditional
Administrative Structures*
From Customary Courts
Edict. No. 30 of 1966
(Section 6 (1))

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ETHICAL CLEARANCE CERTIFICATE

Certificate Number	UZREC 171110-030 PGD 2017/177					
Project Title	A comparative study of justice dispensation in Oyo and Zulu traditional administrative structures					
Principal Researcher/ Investigator	AO Ajayi					
Supervisor and Co-supervisor	Dr MZ Shamase					
Department	History					
Faculty	Arts					
Type of Risk	Low Risk – Desktop Research					
Nature of Project	Honours/4 th Year		Master's		Doctoral	x Departmental

The University of Zululand’s Research Ethics Committee (UZREC) hereby gives ethical approval in respect of the undertakings contained in the above-mentioned project. The Researcher may therefore commence with data collection as from the date of this Certificate, using the certificate number indicated above.

- Special conditions:
- (1) This certificate is valid for 3 years from the date of issue.
 - (2) Principal researcher must provide an annual report to the UZREC in the prescribed format [due date-01 June 2018]
 - (3) Principal researcher must submit a report at the end of project in respect of ethical compliance.
 - (4) The UZREC must be informed immediately of any material change in the conditions or undertakings mentioned in the documents that were presented to the meeting.

The UZREC wishes the researcher well in conducting research.


 Professor Gideon De Wet
 Chairperson: University Research Ethics Committee
 Deputy Vice-Chancellor: Research & Innovation
 18 July 2017

CHAIRPERSON
 UNIVERSITY OF ZULULAND RESEARCH
 ETHICS COMMITTEE (UZREC)
 REG NO: UZREC 171110-30

25-07-2017

RESEARCH & INNOVATION OFFICE