

## Colonialism and Mazālim Court System in Sokoto Province, 1903-1960

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**Abstract:** *It is evident that all forms of societies; traditional or modern, have an established legal codes that provided grounds for the justice system to operate and ensure social control and harmony in society. However, in most societies, these legal codes has an attachment to the religious belief of either the dominant group or otherwise, which provide a complex set of norms and doctrines within which the justice system will be made relevant. In an area called Northern Nigeria generally and Sokoto province in particular, there was an established legal codes; Shari'āh, with distinct court system where Mazālim court in Sokoto was the apex of all courts in the entire Caliphate, deeply rooted and dominant in the society before the establishment of colonial rule in the area in 1900. The establishment of the colonial administration in the area, alien in its nature had to enforce a legal system to serve as a means through which British interest in administration and social control of the society be protected and maintained. This paper argued that, the Lugard second speech in Sokoto, 1903 was a milestone in the transfer of the judicial powers of the Mazālim court of the Caliph to the resident Sokoto and subsequently the Governor of Northern Nigeria. This was followed by other the native court proclamation that provided in it, the repugnancy and the opting-out clauses that systematically loosen the administration of the Shariah criminal codes under the native courts provision. These are the serious implications of Colonialism to the Mazālim court system in Sokoto province.*

**Key words:** *Colonialism, Mazālim Court, Shari'āh, Native Court*

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### I. Introduction

The delineation known as Sokoto province came as a representation of what in the 19<sup>th</sup> century under the Caliphal system, used to be known as the Sokoto Metropolis or the Metropolitan Emirate.<sup>1</sup> This was born out of the Emirate system of administration that was run by the Sokoto Caliphate authorities in a confederate manner.<sup>2</sup> Thus, the provincial system came in place with the occupation of the Caliphate by the British forces, where it reflects a system through which segmentation of the Caliphal territory into political units was undertaken by the British for administrative convenience. Since 1903, when finally, the territories of the former Sokoto Caliphate were fully occupied by the British and annexed within its colonial territories, Sokoto province that was formerly the headquarters of the Caliphate (where the Caliph resides and operate his temporal functions) became restricted to a narrow confine of the present Sokoto, Kebbi and Zamfara States of Northern Nigeria.<sup>3</sup>

Before the final collapse of the Sokoto Caliphate to the hands of the British in 1903, the then Sokoto metropolis and by extension the generality of the Caliphate was based on an elaborate judicial system that provided the grounds for the administration of its legal principles, otherwise known as the Shari'āh as a ... 'system of law which is an integral part of their religion,'<sup>4</sup> of Islam. The integral feature of Shari'āh makes it a distinct system of law as well as a determinant for the control and imposition of a social order in Muslim community. The operations of the Shari'āh legal system in the former Sokoto Caliphate (present Sokoto province inclusive) was to a large extent responsible by an elaborate court system that was defined by its functions and operations in satisfying the provision of the legal system and maintenance of a coherent social order.<sup>5</sup>

The court system operated though, in hierarchies which determined its jurisdictional capabilities in handling cases of civil and or criminal nature, with full reference to Islamic principles, text and or provisions. These courts range from the Hamlets, Village head's, Alkali/District Head's, Qāḍi Quḍḍāt's/ Emir's to the apex court of the Caliph in Sokoto. Besides this formal hierarchy, existed a semi-formal means of resolving disputes (undertaken by Ulamā,

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<sup>1</sup> See K. S. Tsafe, *State and Economy in the Sokoto Caliphate: Policies and Practices in the Metropolitan Districts, 1804-1903*, Zaria, ABU press, 1999, Pp. 59-65

<sup>2</sup> Sokoto Caliphate operated an 'Emirate system' of government, where political units under an Emir enjoyed a proportional degree of freedom in administration without much interference from the Caliph who resides in Sokoto. Some of these emirates are: Katsina, Fombina, Kano and Zazzau among others. Thus, Sokoto as the headquarters of the Caliphate was administered within the pretext of an Emirate, though being headed by the Caliph and from where he exercises his temporal functions as the Caliph, not an Emir, hence the name Metropolitan Emirate. For details of this see S. Abubakar, "The Emirate-Type of Government in the Sokoto Caliphate", *Journal of Historical Society of Nigeria*, Vol. vii:2, 1974; S. Abubakar, "The Established Caliphate: Sokoto Caliphate, Emirates and their Neighbours", in Ikimi, O. (ed.), *Ground work of Nigerian History*, London, Heinemann, 1980; C. N. Uba, "The Emirate and Central Government: The Case of Kano – Sokoto Relations", In Y. B. Usman (ed.) *Studies in the History of the Sokoto Caliphate, Nigeria*, The Department of History – ABU Zaria and Sokoto State History and Culture Bureau, 1979cf Note 1 above.

<sup>3</sup> See P. K. Tibenderana, *Sokoto Province under Colonial Rule, 1903-1939*, Nigeria, ABU Press, 1988

<sup>4</sup> J. N. D. Anderson, *Islamic Law in Africa*, London, Franck Cass, 1978, P. ix

<sup>5</sup> See T. Naniya, "History of Shariah in Some States of Northern Nigeria to Circa 2000", *Journal of Islamic Studies*, Vol. 13:1, 2002

heads of guilds organisations, etc.) that were only done on civil cases, with limited restrictions to criminal cases, but operated within the provisions of the Shari'ah.<sup>6</sup> However, the developments in the hierarchy of the court system follow suit the development of the hierarchy in the administrative structure of the Caliphate Society. This explains the appeal characteristics in the court system, to which the Caliph's court was the apex, with Mazālim jurisdiction over all other courts in not only the Metropolis but the Caliphate generally. The Mazālim jurisdiction, defined the mandate for the Caliph or any other representative of the Caliph to that effect, to review and redress any wrong done intentionally or otherwise by a court of law, an administrator/State official or any individual.<sup>7</sup> This was the legal system tenable in the delineation called Sokoto province before the colonial period and formed the basis for limiting the scope of this paper to Sokoto province. This paper however, attempts as its object a Preliminary examination of the British judicial policy in Sokoto province and its implications to the functions as well as operations of Mazālim court system in Sokoto province.

## **II. The Basis for the British Interests**

There is no doubt that, industrial revolution has been the major force that pushed Europeans out for imperial enterprise in Africa.<sup>8</sup> Thus, on the course of which, the Europeans after some significant level of interactions with the Africans, came to realize the expediency of the political influence to the achievement of their imperial enterprise and as a result of which they mapped out strategies to provide the needed political backing for the actualization of their imperial dream. Of course the Europeans were in the territorial map of what in the early nineteenth century became Sokoto Caliphate ever before its establishment and subsequent imposition of colonial rule in the area.<sup>9</sup> The impact of their involvement into the political affairs of the Caliphate system could be traced to the 1885 visit of Joseph Thompson to Sokoto and Gwandu, which led to the subsequent signing of the treaty on whose British lay claims for the territory of the Caliphate against its French and German rivals during the partition struggle.<sup>10</sup>

Contentious as this treaty may be in its 'terms and content', yet the British had its interest to forestall in the Caliphate territory in achieving its imperial motive. The contention in the terms and content of this treaty is of less interest to the object of this paper, but it's being reflected here as it formed the basis for the claims that led to the transformation of the structures and even the super structures of the Caliphate society generally. This was through conquest which Lugard accused the Caliphate leadership in Sokoto (specifically Caliph Abdurrahman d. 1902) to have caused by not accepting the superiority of the British Monarch on the declaration in 1900. He thus, categorically stated that:

The old treaties are dead, you have killed them. Now these are the words which I, the high commissioner, have to say for the future. The Fulani in old times under Dan Fodio conquered this country. They took the right to rule over it, to levy taxes, to depose kings and to create kings. They in turn have by defeat lost their rule which has come into the hands of the British. All these things which I have said the Fulani by conquest took the right to do now pass to the British.<sup>11</sup>

In addition Lugard identified that as a result of the conquest he buried the treaties signed by Thompson in 1885, the implication of which translated to the forceful implementation of the British rule over the subjects and land of the Caliphate.<sup>12</sup>

## **III. The British Judicial policy in Sokoto Province, Northern Nigeria**

The Beginning of the British administration in the Northern protectorate of Nigeria began since 1900 with the proclamation made by Lugard at Lokoja to which effect, series of (forceful) measures were implemented by Lugard to ensure its achievement. After the 21<sup>st</sup> of March 1903, Sokoto province was created on the pretext of the British administrative policy which derives its basis from the treaties of 1885, and which propagated concealment of the lands of the Caliphate to the British protection.<sup>13</sup> The British administration, being new in the conquered areas have to employ some mechanisms through which social order among the native populace as well as resistance to the new British administrative policies will be silenced. This formed serious challenge the British had to address first for the success of its administration in the area. In addressing this, a legal and moral norm had to be introduced as a means that will facilitate smooth transition from the former (Caliphate) to the new (British) order. This made necessary the British judicial policy that has both British and Native characteristics, as a means to achieve and sustained a coherent

<sup>6</sup> See T. M. Mukhtar, "A History of The Mazālim Court System in the Administration of Justice in Sokoto Metropolis", Ph.D Thesis, UDU Sokoto, 2015

<sup>7</sup> See Ibid.

<sup>8</sup> H. A. S. Johnston, *The Fulani Empire of Sokoto*, London, Oxford University Press, 1967 P. 206

<sup>9</sup> For the early European contact to some parts of the Caliphate even before the establishment of the Caliphate, see NAK/SNP 17/3, 29;833, "European Contacts with the Native Provinces (NP) before British Occupation", Notes by Mr. P. A. Benton.

<sup>10</sup> On the nature of the British claims over the Caliphate territory, see, P. K. Tibenderana, *Sokoto Province ...* P. 46

<sup>11</sup> Lugard Second speech in Sokoto as appended I in Ibid., P. 263-264; cf Emir Muhammad Attahiru Letter of Appointment, 22<sup>nd</sup> March, 1903, In P.K. Tibenderana, *Sokoto Province ...*, Pp. 264-265. Lugard in this respect was referring to the letter claimed to have been written by Caliph Abdurrahman bn Atiku to him in 1902, and the subsequent death of his resident at the hands of Magajin Keffi.

<sup>12</sup> See D. J. M. Muffet, *Concerning the Brave Captains: Being a History of the British Occupation of Kano and Sokoto and the Last Stand of the Fulani Forces*, London, 1964

<sup>13</sup> Cf P. K. Tibenderana, *Sokoto Province ...*, Pp. 46-83

social system under British administration. The duality in the features of this British judicial policy is in consonance with the provisions of indirect rule system of administration, even though, the supremacy of the British common law was upheld.

**Under this,**

... the British administration permitted the application of the rules of customary law provided the rules pass a general test of validity: not repugnant to natural justice, equity and good conscience or incompatible either directly or by implication with any law for the time being in force.<sup>14</sup>

This new judicial policy was enacted for not only the Sokoto province but, to the general British Niger protectorates. This could be sieved from the statement that:

The fundamental law in the Native Moslem courts of Nigeria is the Maliki Code of Mohammedan Law, and in the Native Pagan courts it is the local Native law and Customs. Both are subjects to the proviso that all judgments and sentences must not be repugnant to natural justice and humanity, or to any ordinance of Nigeria. In criminal cases, however, the penalties awarded are not strictly limited by the criminal code.<sup>15</sup>

With the new judicial arrangement, a new structure and hierarchy of courts were provided in Northern Nigeria in the following grades; A, B, C, D. each with its jurisdiction defined as;

The powers of a court of A grade may extend to Capital sentences, but in every such case the Resident must submit to the Governor the whole of the documents, covered by a report and a recommendation as to whether the sentence should be carried out or not. The Governor may order a re-trial, or call for further evidence, or confirm the sentence, or he may pardon the person sentenced. The powers of the courts of the C and D grades are generally almost unrestricted in matters which are regulated by Native Law and custom such as Marriage, &c., but in criminal cases they are restricted according to the ability and reliability of the court. Sentences of a Native court other than death are not subject to formal approval or confirmation, but the Resident has ample powers of transfer to his own court ... or of ordering re-trial to ensure that no manifestly unjust sentence is passed.<sup>16</sup>

#### **IV. The Implications**

The implication of this definition of the jurisdiction of the courts system stems in its categorization of the courts to which the Caliph's court, that during the Caliph era was the apex of court hierarchy (in the whole Caliphate) falls within the A grades court category. The category where chiefs and elders formed the constituents of the judicial officers and with the restrictions imposed in its operations on criminal proceedings; 'sentences of death will not be carried out without the consent of the Resident'<sup>17</sup> and ... 'in every such case, the Resident must submit to the governor the whole of the documents, covered by a report and a recommendation as to whether the sentence should be carried out or not.'<sup>18</sup> Thus, this provision suggested relegation of the Caliph's court in terms of operations and or jurisdictions as it was limited to a review of criminal cases without its adjudication/administration. Simply because, the authority of enforcing powers or rules are withdrawn from them and been transferred to the British. This is despite the fact that yet, these traditional institutions command high respect among their respective subjects.<sup>19</sup> In addition, the introduction of the common law as a supreme law over what the British authorities called the 'Native laws'. By the Native court proclamation of 1900 'Natives of Nigeria' were subject to native court jurisdiction, except government servants and those living in cantonments. But this restrictions of subjects to the native courts became somewhat loosed by two clauses in the same native courts proclamation. These clauses are first, the repugnancy clause; which upheld the native laws and customs only when such are not 'repugnant to natural justice, equity and good conscience, nor incompatible either directly or by necessary implication with any (written) law for the time being in force'.<sup>20</sup> The second clause is the 'opting-out'; where a muslim (or any native) will choose for the purpose of civil or criminal transaction that his 'obligation therein should be regulated by the English law.'<sup>21</sup> These clauses have to a great extent rendered the confinement of subjects to native courts jurisdictions extra-ordinarily loose.

<sup>14</sup> B. C. Uweru, "Repugnancy Doctrine and Customary Law in Nigeria: A Positive Aspect of the British Colonialism", *African Research Review*, Vol.2:2, 2008,

<sup>15</sup> L. Lugard, *The Political Memoranda: Revision of Instructions to Political Officers on Subjects Chiefly Political and Administrative, 1913-1918*, London, Frank Cass and Company, 1970, P. 83; E. A. Speed (ed.), *Laws of the Protectorate of Northern Nigeria*, London, Steven and Sons Ltd., 1910

<sup>16</sup> F. D. Lugard, *Ibid.* P. 89

<sup>17</sup> P.K. Tibenderana, *Sokoto Province ...*, Pp. 263

<sup>18</sup> F. D. Lugard, *Ibid.* P. 89

<sup>19</sup> Alhaji Shehu Ahmad Wali (Walin Yauri), years, Yelwa- Yauri, 3<sup>rd</sup> May, 2014; Alhaji Mukhtar Abdullahi (Walin Gwandu and Chief Imam Kebbi State Central Mosque – Birnin Kebbi), 60 years, Kebbi State Central Mosque – Birnin Kebbi, 18<sup>th</sup> May, 2014, Present Malam Yasin Abubakar, 32 years, Lecturer UDU Sokoto; Alhaji Ibrahim Birnin Kebbi (Galadiman Gwandu), 74 years, at his residence in Birnin Kebbi, 18<sup>th</sup> May, 2014; Dr Sani Abubakar Lugga (Wazirin Katsina), 64 years, At his Residence in Katsina, 19<sup>th</sup> May, 2014, Present Malam Murtala Sani Danmusa, 35 years and Malam Aliyu Abdullahi, 32 years, both of whom are staff of the Umaru Musa Yar'Adua University, Katsina state - Nigeria.

<sup>20</sup> P. Ostein, *A Study of the Court Systems of Northern Nigeria With A Proposal for the Creation of Lower Sharia Courts in Some Northern States*, Research Report No. 1/99, University of Jos, Nigeria, Centre for Development Studies, 1999, P.37

<sup>21</sup> See *Ibid.* Pp. 18-21

With reference to the abrogated Caliphal society in particular, Sokoto metropolis, native laws and customs refers to the Shari'ah legal system as the predominant legal norm governing the social transactions in the area. The most of the serious consequences, though salient, to the Shari'ah legal system was stripping up the Caliph his judicial as well as his juridical powers to the Resident of Sokoto province. This is suggestive of the fact that, his legal powers as a Caliph is no more in terms of appointing and deposing chiefs let alone of adjudicating over criminal offences and redressing wrongs done by his subordinate Emirs, District heads and state officials (especially on criminal matters), except with the approval of the British resident in Sokoto.<sup>22</sup> The effect of which is summarily stripping up his powers of Mazālim Jurisdiction (which is central in the administration of justice) over the district heads under him and application of Shari'ah criminal procedure in the Hudūd offences, which were termed repugnant to natural justice and good governance by the British.<sup>23</sup>

The imposition of this new judicial structure however, as a means through which social control of the new British colonies were to be achieved did not come as a surprise to the leadership of the defunct Caliphate.<sup>24</sup> This was for, initially the leadership and the intellectuals before the confrontation with the British, had severally engaged on finding the right means through which the British encroachment could be curtailed in order to safe guard the Shari'ah. The outcome of which resulted to an intellectual discourse on the basis of Hijrah or staying under the leadership of the Heathen (British) when the occupation forces started attacking the territories of the Caliphate to the time the forces arrived Sokoto in March, 1903.<sup>25</sup> This intellectual discourse signified one important point that, accepting to stay under the British rule will tantamount to accepting their rules as an ultimate rule over the Shari'ah, to which the whole Caliphate will have to ascribe to. Thus, on the fall of the Caliphate, sources identified that, Caliph Attahiru I before leaving for the east, have at Marnona gave mandate to his people on choosing to follow him or staying behind, from where he proceeded.<sup>26</sup>

On the other hand, the British did not relent in their efforts to interfere when and wherever necessary to protect the British interest in the Native courts.<sup>27</sup> Thus, despite which, some learned jurists who were in charge of administering justice in the Native courts refused to dance to the tune of the British interest but were later to be disengaged in their respective posts, a clear example of which was the Alkalin Jega.<sup>28</sup> In a similar case the British after the Satiru revolt of 1906, wanted the execution of the leaders for killing some of the British forces while on combat, but the Alkali; Alkali Modibbo, in Sokoto refused until he was convinced that the Satiru people killed some Muslims too.<sup>29</sup>

This kind of problem was not only peculiar to Sokoto province alone but pockets of its kind were experienced in other provinces within the former Caliphate. One of the worst among these resistances to the British was the Hadejia revolt of 1906.<sup>30</sup> Another example was the resistance of Emir of Missau against the Resident Bauchi province for deciding on the case that was to be under his jurisdiction if it were in the nineteenth century.<sup>31</sup> The roots of all this lay in the nature of the judicial system being supplanted by the colonial government to the subjects.<sup>32</sup> The system formed the basis for the non-existence of the Caliphal institution and saw the collapse of the Mazālim institution in the Sokoto Metropolis. This reflect the changing status of the Caliph to Sultan and the withdrawal of authority to operate and enforce laws which till date the traditional councils were only concern with dispute management and resolution. Though, there are some units of the judiciary today that emerged out of the colonial experience, which claim operating Mazālim functions; public complaint commission and Ombudsman.<sup>33</sup> These units however do not reflect full functions of the Mazālim courts system, for, they have no right to judge and enforce verdicts; rather, the units seem to be more

<sup>22</sup>Ibid.

<sup>23</sup>L. Lugard, *The Political ...*, P. 89; Cf NAK/SNP 453/1905, Sokoto Province Report for the Months of March and April by Resident Burdon, Par 18-25; Cf A. B. Mahmud, *A Brief History of Shariah in the Defunct Northern Nigeria*, Nigeria, Jos University Press, 1988.

<sup>24</sup>See T. M. Mukhtar, "Amalgamation and Its Implications on the Nigerian Judicial System", Presented at the 57<sup>th</sup>/58<sup>th</sup> Annual Conference of Historical Society of Nigeria, Nsukka-Enugu, September 2014

<sup>25</sup>On this note see, R. A. Adeleye, *The Dilemma of the Waziri: The Place of Risalat al Waziri Ila ahl Ilm Wal Tadabbur in the History of the Conquest of the Sokoto Caliphate*", JHSN, vol. iv/2, 1968; Al-Qadi Abdallah bn Liman, *Risalat Ilal Mu'asirina*, translated O. Bello, 'Ulamā and Colonialism in Nigeria

<sup>26</sup>Cf P. K. Tibenderana, *Sokoto Province ...*, Pp. 46-83

<sup>27</sup>Usman, M. T., "The Ulama and the Administration of Justice in Colonial Northern Nigeria – A Case of Sokoto Province", *Hamdard Islamicus*, Vol. xxix:4, 2006; Cf NAK/SNP 453/1905, Sokoto Province Report for the Months of March and April by Resident Burdon, Par 18-25. Some of these interventions were recorded in trying to ensure the implementation of the British policy on issues like slavery, for details of these kind of interventions on slave redemption, manumission and maltreatment of slaves in both the Provincial court and Native courts, see, NAK/SNP 7/10 4964/1909 Sokoto Province Report for Half Year Ending 30<sup>th</sup> June, 1909; NAK/SNP 6/7 3263/1906, Freed Slave Girls from his wife as Domestic Servants application.

<sup>28</sup>M. T. Usman, *Ibid.*, P. 15; cf NAK/SNP 453/1905, *Ibid.*; for more on the Satiru revolts See, NAK/SNP165/1906, Report on Satiru Rising, Letter no. 139/06; NAK/SNP 185/1906 Report on the close of operations against Satiru

<sup>29</sup>*Ibid.*, P. 16

<sup>30</sup>For the Hadejia revolts see H. Wakili, *Turawa a Kasar Hadejiya: Karon Hadejiyawa da Turawan Mulkin Mallaka*, Kano-Nigeria, Benchmark Publishers, 2005

<sup>31</sup>A. Hussaini, "The Administration of Justice in Katagum Emirate, 1903-1960: A Case Study of Judicial Transformation in Sokoto Caliphate Under Colonial Rule", *SAPHA: A Journal of Historical Studies*, Vol. 1:1, 2003

<sup>32</sup>T. M. Mukhtar, "Amalgamation and"...

<sup>33</sup>I am grateful to Barr. M. Mahmud of the Sokoto State Ministry of Justice, for drawing my attention to this point.

occupied in peaceful and formal means of managing disputes or when this mechanism failed cases will be forwarded to court of law for adjudication.

## **V. Conclusion**

The institution of Mazālim in the defunct Sokoto Caliphate has no doubt existed and operated with all its juridical powers as the apex court, where injustices and all forms of high handedness are being addressed by the Caliph. This further signified the Islamic constitutional responsibility vested on the Caliph, as the chief judicial officer of the Caliphate, to ensure justice being done among all levels and classes of people within his domain. Thus, it is argued in this paper that, this apex court that to a greater extent determined the strength as well as ensures the enforcement of Shari'ah legal principles, came into contact through occupation with an alien (British) legal codes that subsequently render the Shari'ah secondary. However, the supremacy of the British legal system came to fore in the first instance when the juridical powers of the Caliph were transferred to the Resident Sokoto province. This translates that, he (the Resident) became the chief arbiter of the province to which all approvals on judicial matters (especially on criminal proceedings where Shari'ah criminal procedure is to be applied) must be sorted for. This as argued in this paper became the most serious of implications colonialism inflicted on the Mazālim court system which was the helm of affairs of the Caliph judicial system. This in addition, reduces the judicial services of the Caliph (who was later called Sultan) to administration of cases relating to civil causes only in his court, and dispute resolutions.