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The Law and Inheritance System of Widows in Owan, Nigeria up to 1900s

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ABSTRACT

The Owan people established an effective law system on matter related to inheritance on property and widow before the emergence of colonial rule which endured the maintenance of peace and harmony in the society. The law system regulating inheritance was anchored on the religious and cultural beliefs of the people. The law of inheritance of property and widows falls within the communal principles which ensured fairness and equity. Laws in Owan also moderated behaviour and fostered socio-cultural development. Beyond this, the spirit of communalism promoted cooperation in the society where every member felt responsible for peace building in the community. This paper therefore seeks to examine the place of law in respect to property and widow inheritance in Owan before colonial rule. The paper adopts the historical method of research utilizing data obtained from primary and secondary sources. The data collected are critically assessed and analysed. The paper concludes that the indigenous law in Owan categorises a widow as part of a man's property. The paper submits that the Owan's recognition of widow inheritance shows that marriage was not thought to end when a husband died. The study is divided into four parts. Immediately following the introduction is a definition of law and its characteristics in Owan. The third part examines adjudicatory laws of inheritance in Owan, while the fourth part examines the adjudicatory law of inheritance and widow as an inheritable item. Lastly, the fifth section concludes the work.

Keywords: *Law, Inheritance, Property, Widow, Owan and Nigeria.*

Introduction

The trend in pre-colonial Nigerian historiography has been the attempt to concentrate studies on prominent kingdoms, major ethnic nationalities, coastal communities and the contribution of men to the growth and development of society. Consequently, the histories of small communities and societies and those of women have been neglected by historians. Following the impact of the world-wide women's movement, greater attention is being paid to women's issues in African historiography. The current study looks at law and the system of inheritance in Owan with focus on properties and women (widow) before the colonial rule.

Owan is an ethnic group in the northern part of Edo State, in south-south geopolitical zone of Nigeria. The ethnic group consists of many clans, which include Emai, Evbi-Mion, Igue, Ihievbe, Ika, Iuleha, Ivbi-Ada-Obi, Ora, Otuo, Ozalla, Sobe and Uokha. The formation and development of the ethnic identity of these clans derives from their social interactions and cohesion. Law was an integral part of the culture of the people and was entrenched in their customs, beliefs and values. The judicial system which evolved in the Owan was an instrument for the enhancement and restoration of social cohesion.

Historicising Law in Owan

T.O. Elias sees law is a body of rules governing human conduct and recognized as obligatory by members of the same society.¹ He refuted the claim by John Austin that human sovereign was lacking in African society, as human sovereign was usually in form of chiefly authorities, as in the Yoruba and Edo kingdoms. Every traditional society, even the non-chiefly Igbo, community had recognized authorities who could pronounce what was the law in a given situation. The ruling authorities had the power to legislate for their subjects. Hence, in Owan society there were informal courts at the various adjudicatory levels for the purposes of administration of specific cases.

Ideas about what is right and what should be the law do not spring from the air. Rather, they are derived from sources both internal and external to the indigenous society they regulate. External sources indicated that some laws came from external sources. The idea is that some higher, metaphysical standards or conducts govern the affairs of humankind. Laws in Owan were divided into two broad categories of private and public laws, just like in every other pre-colonial society in Nigeria. While the private law dealt with disputes, which in contemporary times, might cause a breach of peace, the public law on the other hand was concerned with various forms of anti-social behaviour like treason, witchcraft/wizardry, and religious offences in general. The law in Owan was unwritten just like every other African earliest society. Their principles were expressed in general welfare of the society. The most distinct feature of Owan law was in the area of “acting as a cord that binds members of the society”. Laws were meant to build interpersonal relations. It was therefore the duty of those who were saddled with the responsibility of adjudicating disputes to assuage injured feelings, to restore peace, to reach an acceptable compromise to both disputants.²

Another outstanding feature of Owan laws was in the area of peace-keeping process. At the end of every civil case, it was not uncommon for the adjudicating authority (chiefs and elders) to deliver end-of-trail admonitions to the parties involved in disputes. These pieces of advice were both instructive and soul edifying. In addition, the guilty party was traditionally expected to tender an unreserved apology to the other party during the court proceeding. The cultural acceptance of such apology often demonstrated a genuine heart of forgiveness. One traditional requirement of Owan adjudicating authority was none of the parties were free of blames. Tradition and customs invested in the authority of the adjudicating informal courts to caution every member of the society on the need to live together as one indivisible family and community.

The principle of collective responsibility was another feature of the application of laws in Owan. A family, quarter and village took collective responsibility for the conduct of its members both in civil and criminal matters. In a civil case for example, members of a family had to ensure that anyone of them who had a case to answer, went to the village court. If the person ran away from the community, members of the family, including the extended family, could be called upon to pay fines or damages that might be incurred in the process of adjudication. For example, among the Igbo traditional society of eastern Nigeria, a creditor who failed to recover his money and goods from a debtor could go to the compound of any of the debtor’s relatives and capture goats or any other valuable property that was equivalent or exceeding the value of the debt.³ It was a traditional principle of Owan customary law that a debt never died. It is therefore an important aspect of the adjudication process in Owan for members of a community to act in fostering peace and reconciliation. This principle of collective responsibility strengthened kinship solidarity as well as prevented crimes in traditional society. A British administrative officer wrote about Ikere District in present day Ekiti State that “most violations of peace and order were not punished on the individual so much as on his family.”⁴

Criminal cases were often provided with fair trial in most Owan. Some public offences were tried in an open court. The accused person was arraigned before the ruling authorities and provided every opportunity to defend himself. The chiefs and elders who were always guided by their traditional wisdom would ensure that a proper trial process was carried out before pronouncing their verdict. If the person was found guilty of the offence, such a person could be hanged publicly. The public hanging was to act as a deterrent to others.⁵ There were however some other public offences (political and religious in nature). Such offences were tried by a secret society. Such secret societies were held as the ‘conservators of the public will’. Examples abound in Nigerian pre-colonial society. For example, the Ogboni society of the

Yoruba communities, the Ekpo (Leopard) and the Ekpe (spirit) societies amongst South-eastern Nigeria, the Sekeni society among Okrika, Kalabari, Nembe and Akassaos, the Nyamagbe society in the Nnam area of Ogoja, the Oro, Agemo, the Adamu-orisa and Gelede cults in many parts of Yorubaland were examples of this kind of practice.⁶ Like in Iuleha, one of the communities in Owan, the 'Otu-isiri' (was always saddled with traditional responsibility of carrying out such duties.⁷ These mentioned societies assisted the various traditional societies to handle the adjudication of most serious criminal offences.

Criminal offences like theft were considered a serious offence in Owan communities but the thief was punished not as much for his theft as for the element of mistrust which he was believed to have introduced into the family and community by his act, thereby making interpersonal relations rather precarious. A crime was viewed as a 'disturbance of individual and communal equilibrium'. This was why one of the objectives of the law in imposing sanctions was 'to restore the pre-existing balance'. Thus, in most Owan communities, except for intentional murder and witchcraft/wizardry, the penalty for which was death, virtually all other offences could be neutralized by payment of adequate compensations to the injured party.⁸ For example, a justifiable and accidental homicide was settled in the area of Esanland. The murderer was meant to forfeit his own right to live. He was sent to Eguare where he became the property of the Onoje who had the supreme authority. If the accused person had a slave, or a child or a junior brother, he gave one to replace the one lost to the family, while he himself remained at the Eguare at the Onoje's discretion. The Onoje might allow him to live as his slave, be sold or killed. His farm and house could also be confiscated or in some cases the accused murderer was led to the bush to die by self-hanging. No one was traditionally expected to beat or touch the murderer.⁹

The aim of punishing the offender in Owan society in criminal matters was to produce a corrective measure so as to promote the welfare of the traditional community. A deviant was easily rehabilitated in the society once the necessary compensations and ritual sacrifices were carried out. This was an indication that the criminal offender had purged himself of his anti-social pattern of behaviour. The application of criminal law in the traditional society provided for a clear-cut passage back to society with little or no stigma attached to the person who had deviated.¹⁰

Religion also played a major feature in the application of Owan laws. Tamuno is of the view that religion represented the engine of the traditional law of several pre-colonial communities.¹¹ There was a strong belief traditionally on the existence of religious deities, which include the spirit of departed ancestors. The traditional community was said to be made up of the dead, the living and the generations yet unborn. The ancestors were believed to be particularly interested in the peaceful coexistence of the traditional community and in keeping the peace of administering justice. Laws were believed to have the moral and spiritual support of the ancestors. Hence, the authority (chiefs and elders) who administered the law were seen as representatives of the ancestors. They were expected to be fair and impartial in the adjudication of justice as they were believed to be under the watchful eyes of the ancestors. In the discharge of the administration of justice, parties or accused persons strongly believed that telling lies was incurring the anger of the ancestors. The traditional belief in the supernatural agents who were capable of exerting or exercising retributive justice was a traditional regulator of behaviour in the administration of justice in traditional Owan. The concept of the law was therefore essentially from their common culture and traditions. It was in consonant with what was morally acceptable in the society. Indeed, law in Owan was a mirror of accepted usage or the culture of the people that observed it. Law was flexible (or elastic), organic (not static), regulating and a living rule, long and unwavering habits and in existence at the material time, not dead ashes of custom of bygone days, accepted as a custom of universal application and enjoying the assent of the community.

Anthony Allott also pointed out what constitute the features of the traditional judicial system to include, the traditional and popular character of the law, basic similarities in judicial procedure, whether in the courts of chiefs or in the arbitrary tribunals of villages, clans or household, the role of the supernatural, patterns of government which almost always rested ultimately on the consent of the governed and the role of the community in the interpretation and enforcement of law.

Adjudicatory laws of inheritance in Owan

Many of the customary and traditional laws in pre-colonial Owan communities were designed with the aim to protect the positions of the first eldest son in accordance with the position they occupied according to 'doors'. Their traditional belief was that the first eldest son would always provide for the rest members of his family including his mother. All the eleven communities that make up Owan had different inheritance laws that regulated their inheritance practices. It was a common practice amongst the Owan laws and customs of inheritance to recognize a man's children as his traditional heirs. But should a man die without any surviving children, especially male children, his brothers customarily inherited his property.¹²

Law and property inheritance, "widows were property"

The subject of widowhood has been a topic of interest to few researchers. Afigbo opined that, while topics like marriage and family, the economic role of women and, recently, the political rights of women have received a fair measure of attention, a subject like widowhood practices remains largely neglected even in anthropological monographs on African communities.¹³ Widowhood is defined as a state of loss of a marital partner. It is also defined as a phase of marriage following the death of one of the partners. Widowhood involves not only the loss of the role of a wife but also the loss of a person most supportive of the woman. Widowhood can result in an identity crisis if the woman's sense of identity was tied to her role as wife.¹⁴

The administration of the property of a deceased person, the position of the first eldest son was recognized as the first 'door'. The position of the other first eldest sons of the rest 'doors' or women were also accorded traditional and customary rights. Thereafter, the rest sons and daughters were given their shares. Customarily, a part of the house of a deceased man was inherited by his first eldest son and he was traditionally obligated to accommodate his brothers and sisters. In addition, other pieces of property of the deceased man like farmland, domestic animals and household ware were shared on the basis of doors. Many informants interviewed were of the opinion that this arrangement was put in place by their forebears to ensure that every eldest son of each of the deceased's wives was provided for with a view to providing for their other siblings including their mothers. Apart from sharing property, wives were also considered as "shareable" or "inheritable" items. The mystical bond of marriage uniting the husband and his wife through the payment of bride price made by the man survived his death, but not that of the wife. In other words, while the death of a woman terminated a marriage, the death of a man on the other hand did not bring the marriage to an end.

The authority of the deceased husband is traditionally transmitted to his appropriate kinsmen under widow inheritance law. Under this practice any child born during coverture was affiliated to the new husband and not of the deceased husband as in the case of the levirate union practiced in some other parts of Africa, where the new suitor ranked merely as the biological donor and seed raiser for the departed husband.¹⁵ And for this practice when a deceased man had four wives, the wives were shared to the eldest sons of each door respectively according to laid down traditions and customs.

Sample law of inheritance of widows in Owan

S/ N	Wife category	Door category	Son category	Customary/Sharing pattern
1.	Wife A	Door A	Eldest son A	Eldest son A to marry wife B
2.	Wife B	Door B	Eldest son B	Eldest son B to marry wife C
3.	Wife C	Door C	Eldest son C	Eldest son C to marry wife D
4.	Wife D	Door D	Eldest son D	Eldest son D to marry wife A

Source: Osiki, Odion- M. “Socio-Economic Development of Iuleha under British Colonial Administration, 1900-1960” M.A. Thesis, Department of History and Strategic Studies, University of Lagos, Nigeria, 2011.

This practice was also similar to the Esan traditional laws of inheritance as practiced in Esanland during the pre-colonial times. The difference was that, in Esan customs and traditions the eldest son, who performed the burial of the deceased father, inherited all the wives, except his own mother, who was usually inherited by the uncle or the *Ominjiogbe*. The eldest first son would give some of the wives to the more senior of his brothers.¹⁶

The traditional laws of inheritance in Owan society, like other African societies, strongly held the widow as part of the deceased’s estate and on the ground that marriage as an institution was more than a union between parties, it was to all intents and purposes a contract as well as an alliance between the families of the spouses. One important point to note is that, women in this situation were free to opt out of the traditional arrangement. They were free to choose not to marry within their deceased husband’s family. In such a situation some women opted out to return to their natal home, or remained with their sons.¹⁷ Owan’s recognition of widow inheritance shows that marriage was not thought to end when a husband died. This system was found on the traditional principles that it afforded protection for the widow and her children and helped to consolidate the dead man’s family and lineage.

Among the Binis, widowhood rites are in two stages. First, the widow is confined to a room outside the family house for seven days immediately after the internment of the deceased husband. She is dressed in black with her hair left unkempt and she is not allowed to take her bath. She must look mournful and sober and must cry, morning and evening. On the seventh day, a wake keeping ceremony is held and the widow is forbidden (by custom) to sleep. On the same day, she performs the semi-purification rites by taking her bath around 4am at a road junction (all alone). Her safe return proves her innocence. The second stage of mourning begins at the end of the seventh day. The widow smears herself and her clothing with charcoal powder and remains so for three months. At the end of the third month, the final purification,

which admits her into the society, is performed. On inheritance, both the widow and property are inheritable objects.

In addition, Owan law of inheritance concerning widow was comparable to the Mosaic Law of widow inheritance. Thus, in Deuteronomy chapter no 25 verse no 5 to 10:

If brethren dwell together, and one of them die, and have no child, the wife of the dead shall not marry without unto a stranger: her husband's brother shall go in unto her, and take her to him to wife, and perform the duty of a husbands unto her. And it shall be that the firstborn which she beareth shall succeed in the name of his brother which is dead, that his name be not put out of Israel. And if the man like not to take his brother's wife, then let his brother's wife go up unto the elders, and say, my husband's brother refuses to raise up unto his brother a name in Israel, he will not perform the duty of my husband' brother. Then the elders of his city shall call him, and speak unto him: and if he stands to it, and say, I like not to take her; Then shall his brother's wife come unto him in the presence of the elders, and loose his shoe from off his foot, and spit in his face, and shall answer and say, so shall it be done unto that man that will not build up his brother's house. And his name shall be called in Israel, the house of him that his shoe loosed.¹⁸

Females in Owan and their positions in the Law Inheritance

Unquestionably, women took active part in the socio-political process of decision-making in Owan society. In one of the colonial intelligence reports based on orally collected information in the 1930s, H.F. Marshall asserted that:

Although women were accorded no recognized position in the management of affairs, they were not without influence, and when their interests were at stake, they would undoubtedly have themselves heard. Council meetings were always held in public and women were permitted to listen, and a woman who was known to be sensible might even be allowed to give her views.¹⁹

In the view of Ogbomo, Owan pre-colonial socio-political arrangement provided for different women's organizations which were based on marriage status and position within the lineage system. These included the *Idegbe* (association of daughters of the family) and *Ikhuoh earle* or *Ikposafen* (wives of the lineage or married women).²⁰ The *Idegbe* association was made up of unmarried and married daughters of a household and lineage. Through these organizations' women were able to address all their concerns about the affairs of lineages and the community. In addition, he went further to say that within Owan society the *Idegbe* were able to exert political power because they were considered 'males' by their fathers, uncles and brothers. In addition, wives in Owan regarded the *Idegbe* women as 'husbands.' The *Idegbe* could also adjudicate cases between their fathers, uncles and brothers on one hand; and their wives on another. The interactions which the *Ikhuoho earle* or *Ikposafen* organization offered acted as avenues through which they formed and expressed opinions about community issues. Usually having met as a group they then presented their views through their representative, *Odion Ikhuoho* to the village or community council. Since they acted as a group it was difficult for men not to listen to them. Hence, a group action was more effective than individual women presenting their cases before the council.²¹

The 19th century witnessed a change as a deceased man's property was shared among all the surviving children with first sons taking the lion share. Daughters were also strongly considered when property was shared. For example, in Otuo community where the position of a daughter was important in

inheritance law, a man's sister's sons inherited some property. Otuo, Uokha and Ozalla had practices on both patrilineal and matrilineal inheritance.²² In most occasional cases daughters shared jointly with sons; sometimes they were heiresses in the absence of sons; but the ordinary rule was that they could only take certain kinds of property, such as beads, cloths or cash crops; and the gift of these may be left to the discretion of the male heir or heiress.²³ Additionally, a woman's property was inherited as a rule by her children, sons and daughters, or only sons. In their absence, the husband was the heir. More often the property went to the brothers and sisters of the woman. A wife never inherited her husband.

Conclusion

Inheritance is a cultural practice that cuts across the whole world. The law was an integral part of Owan socio-cultural development. This work has demonstrated that the various characteristics of law were vital elements that shaped laws of property and widow inheritance among the people of Owanland. The work revealed that the various positions of a first son in property inheritance and those of widows were also inherited as a traditional way of safeguarding the woman from societal challenges. In addition, the work has shed light on the position of widowhood in respect to inheritance status among the peoples of Owan. This system was found on the traditional principles that it afforded protection for the widow and her children and helped to consolidate the deceased man's family and lineage.

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