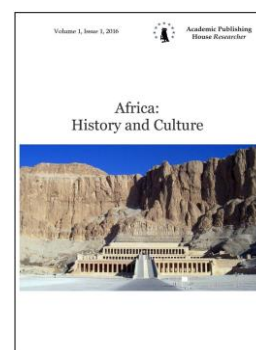


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African Legal Culture in Modern Era: The Etutekpe Okpo Experience, North Central Nigeria

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Abstract

African legal culture exists in every African society to instill order, via the spirit of brotherhood and oneness. Despite the foreign invasion of Africa, the strength of this cultural system remains commendable. This paper examines how the African legal culture works presently with regards to the Etutekpe-Okpo of North Central Nigeria between 1990-2015. Using a mix-methods approach, findings reveal six different segments in the Etutekpe-Okpo legal culture; political (kings and chiefs), ancestors and deities, African Traditional Religion (priest and priestess), family system (the most elderly), social (women and age grade associations), and indigenous court institutions (wise elders). It is also noteworthy that masculinity and the role of community elders are revered with few subscribing to the African Traditional Religion, due to the influx of foreign religions. This paper has implications for future research, education and development of African culture.

Keyword: Africa, Ancestors, Etutekpe-Okpo, legal culture, Nigeria, religion.

1. Introduction

Conflict is an integral part of every human society, hence the indispensability of legal systems in instilling orderliness and justice. From the advent of the European colonial masters, some have argued the fact that Africa had no legal system or culture. This assertion is wrong because a human society cannot exist without legal systems (Olaoba, 2002). In a more practical analysis, law and culture are relatively inseparable as the former is usually seen and understood as an integral part of the latter (Cotterrell, 2004; Tamale, 2014).

Law in African society is never defined in a vacuum; it puts on the gown of culture with ultimate performance. In the past, some foreign scholars perceived indigenous African societies as stateless, thus, cannot experience legal systems (Olaoba, 2002). These states include the Logoli, the Tallensi, and the Nuer (Gimode, Barnes, 2015; Kubar, 2016; Olaoba, 2002; Reshef, Barkai, 2015). Even those societies which have centralized authority like the Ashanti, the Zulu, and the Yoruba were almost denied the existence of legal systems enshrined in their political system (Diawuo, Issifu, 2016; Olaoba, 2002).

The point of confusion lies in the different approaches to the definition of law or legal culture have been defined in the past centuries. Every society has its distinct peculiarities, and so is its legal system. It is egocentric to attribute the definition of law or legal system of a particular society to

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another Austin and Austin (1885) identified law with the ‘command of the sovereign’ thereby making political authority a *sine qua non* of law ‘so properly called’. In furtherance of this view, Salmond (1937) and Gray (1921) emphasized the point of enforcement as the substance of law, and also recognize that only the rules enforced by the court as the core of law. The meaning given to the ‘court’ is however ambiguous.

The Africans do not need a judge (of western type) or what Adewoye (1977) refers to as professional pleader to be robed before justice can be dispensed. Allot (1960) has shown that there are two types of courts in Africa, namely the judicial and arbitral courts. The community’s legal culture is grounded in traditional religion, which is the most paramount among other traditional legal institutions. They believe in the influence and powers of the ancestors on all human activities including health (Zuma et al., 2016). The belief and the fear of their wrath provide a vital force for regulating the conduct of individuals in the community. The African legal culture is geared towards enhancing peace and harmony in the society. The appropriate definition of this legal system is associated with the socialization process, collective responsibility and dynamism of operation. These are values which keep the soul of African solidarity aglow and propel the axis of development (Michalopoulos et al., 2016).

The purpose of this study is to explore the existing African Legal Culture among the Etutekpe Okpo people in North Central Nigeria. The Etutekpe-Okpo community was selected because of its peaceful co-existence due to the structure of the traditional legal system, which is quite civil and non-adversarial in nature.

2. Method

Design

The study used a mix-method approach. Both qualitative and quantitative data were collected.

Participants

Quantitative Sample

Purposive sampling was used to select 40 participants; 10 traditional institution agents who play prominent role in maintaining the legal culture of the community and 15 others who have been witnesses to the evolution of the community’s legal culture.

Table 1. Proportion based on Gender

Variables	Frequency	Percentage
Gender		
<i>Male</i>	32	80 %
<i>Female</i>	8	20 %
Age		
25-35	4	10 %
36-45	6	15 %
46-55	3	7.5 %
56-65	7	15.7 %
66-75	10	25 %
76 and Above	10	25 %
Religion		
<i>Christianity</i>	29	72.5 %
<i>Islam</i>	6	15 %
<i>African Traditional Religion</i>	5	12.5 %
Institution & Agents		
<i>Political institution: kingship/palace chiefs</i>	12	30 %
<i>Women Association & leaders</i>	4	10 %
<i>Religious institution/ leaders</i>	8	20 %
<i>Age grade/youth members and leaders</i>	6	15 %
<i>Family heads</i>	4	10 %

<i>Community elders</i>	4	10 %
<i>Professional Institution: Trade & Commerce/Market leaders</i>	2	5%
Total	40	100%

Qualitative Sample

The key informant interviews included 25 agents of the institutions that maintain the legal culture, while the in-depth interviews included 15 community members that have been witnesses to the operation of the legal culture.

Data Analysis

Content analysis was used to analyse the qualitative data while quantitative data were analysed descriptive analysis.

Research Instruments

An unstructured interview guide was used in the qualitative phase while a structured questionnaire was designed to explore participants' gender, religion, age and their institutions/agents.

Procedure

An approval was given by the Council of Traditional Rulers of the community in written form for the conduct of this research. Participants were also assured that the entire research is for educational and policy making purposes only. Participants were allowed the free will to consent and data kept confidentially.

3. Results

Qualitative Phase:

From the interview analysis, the following themes emerged as the components of indigenous institutions and agents of the community's legal culture:

Theme 1: Political institutions

Theme 2: Ancestors and deities' institution

Theme 3: African Traditional Religion's institution.

Theme 4: Council of elders and family heads institution

Theme 5: Family system institution

Theme 6: Social Institution

Theme 7: Indigenous courts institution

Theme 1: Political Institution: (*Onu and Gago*) Kings and Chiefs

Conflict resolution requires great force of intention and enthusiasm, great probity, bravery and bravado, highly stimulating zeal and enduring sense of history. It behoves on the peace facilitators to be doggedly determined to ward off calamity which conflicts might have triggered off, and a broad knowledge of norms and nuances of the art of conflict resolution at the grass root level.

Kings (usually referred to as *Onu* in Igala language) are part of the agents of legal culture which exists within the indigenous political institutions. The paramount head of the community's political institution is the Attah (which means father) of Igala, who rule in collaboration with the *Onu* in charge of the various towns. They play very significant roles in conflict resolution. They have been adjudged suitable for providing; forum, process, principles, pattern, pace, context, direction for the fine tuning and inauguration of peace and harmony, this fosters growth and development in African societies. These provisions are in tune with the norms and customs of the kingdoms, which the kings inherited from their ancestors, thus to facilitate peace in his domain or jurisdiction. Unwavering wisdom of distilling facts from falsehood to the issue of treatment of conflict, enduring sense of history of norms and the nuances of the kingdom, high level of epitomizing moral order, peace process and classical demonstration of harmony, broader sense of legitimization of the vital link between the universe and the supernatural order, and so much more.

In the case of the chiefs, their job is to partner with the King in the dispensation of justice and handling of administrative as well as serving as advisers in critical situations. The chiefs are lower than the king, but in partnership with the king, carries out legislative, judicial and executive functions. They are duty bound to resolve conflicts regularly and facilitates peace and harmony which will enhance peace and development in the society. The chiefs act as safety verve in the

conduct of conflict resolution during meetings for the king, who perhaps by loss of memory have missed certain procedures associated with the arts of resolving conflicts, thus African chiefs provided; supporting force of action, enabling spirit and motivation, team spirit and interest, checks and balances, validity of verdicts and reconnection points for parties to the conflict.

African chiefs respect their king so well, even in Etutekpe-Okpo, they held the king (Onu) in great reverence, usually accorded kings with utmost obedience, regarded the king as representative of the gods and as such, next to God, upheld the words of the King as law and authority sacrosanct, expected reciprocal gestures from the King (*Onu*). Thus, African chiefs never expected their Kings to be absolute, in the expression of their right and privileges.

Theme 2: Ancestors and Deities Institution; (*Ibegwu, Odumdum*)

The ancestors are the living-dead, and they occupy an indispensable position in the community's conflict management pattern. In Etutekpe-Okpo, the ancestors (*Ibegwu*) are highly feared, because, its dispensation of justice is instant and deadly, sometimes sacrifice will not be able to revoke the wrath of the ancestors. However, in every African society, the ancestors have always played prominent roles in its legal culture.

From the foregoing, it is apparently clear, that African ancestors are no pushover, when it comes to the welfare of the living, they protect obedient members of the society and punish erring members and they certainly cannot be bribed even with sacrifice or propitiations, they carry out justice in every sphere of the traditional African society and even in Etutekpe-Okpo, one can confidently say, the fear of the ancestors is the beginning of maturity.

In the community under review, respondents noted that the nexus between the living and the living-dead (ancestors) is one that is inseparable, and so they stay clear from anything that could make them to come into conflict with the ancestors.

Theme 2: African Traditional Religion's institutions: *Atama (Priest and Priestess)*

The African legal culture is grounded in African traditional religion, in the sense that the adequate maintenance of peace or social engineering is both the responsibility between the living and the living-dead. This however makes the roles of the Priests and Priestess a sacred one. It was as well noted in the course of the field work that the priests and the priestess serve as intermediary between the land of the living and the dead and as well the solicitor in the realms of conflict between the living and the dead.

In furtherance of this fact, once there is an eminent conflict, they are said to receive signals that is superior to the understanding of normal humans, and so they carry out sacrifices to determine the root cause of whatever may be, and if it be an issue that deserves sacrifices or rituals be carried out to appease any of the gods of deities, it would be carried out quickly in order to avert any danger that may want to befall a family, or the entire community. These agents under the African traditional religion institution help to maintain order and sanity in the community's legal culture.

Theme 3: Council of elders and family heads institution: (*Abo ogwijo kpai Attah Ughi*)

In Etutekpe-Okpo, elders have the capacity to initiate developments, give foresight into the future of the society and facilitated peace and harmony, the preserves of law and orderliness, which signalled social engineering. These elders display some important virtues, and these are; tolerance, forbearance, patience, foresight, innovative spirit, self-control, forthrightness, and commitment to development among others.

These qualities enable elders to relate well with members of the communities, to the degree of carrying the people along with the programme of development and thesis of companionship and social engineering.

According to a respondent who is above 90, he believed that 'elders possess certain level of wisdom that is seen as divine';

Respondent 2:

“My son (He looks at me more intently) although the mouth of an elder may be smelly, in it lies wisdom; they are the gods that the Almighty God have raised to handle issues beyond the young brains.”

The system at Etutekpe-Okpo manifested that fair play and justice lies in the process of conflict resolution. The elders cannot afford to do otherwise, in their commitment as geared towards peace and harmony for the parties to the conflict and the society at large.

Theme 4: Family System Institution

At the family level, (facilitator) of peace and harmony are the family heads, who in their own rights are also considered elders. As a matter of fact, family head in African societies and the community under discuss are the most aged and mature. Otherwise, they would have lacked the experience and wisdom to resolve conflicts. They must be the oldest person in the family. The family heads are conscious of the cord of unity among family members; they therefore, exercised some level of caution, patience and level headedness.

In furtherance of this view, findings from participatory observation and interviews conducted reveal that the family is the first place of dealing with conflicts amicably, any conflict that get to the elders, or the palace chiefs are usually the ones that the family cannot handle. Hence, the family is seen as a sacred force and also a fundamental institution of the community's legal culture.

Theme 5: Social Institution

Under this institution, two subthemes can be identified; the women association, and the age grade association.

Women Association: (Ama deejū tabobule)

Women play prominent role in the maintenance of peace and stability in the community's legal culture. They instil discipline and raising young ladies that are well tutored in the community's legal culture. They are seen as mothers as well as models to young ladies. They are symbols of the true nature of African women.

They are in their own right custodian of the community's legal culture which gear towards home making as well as handling marital issues, empowering women to become entrepreneurs, to sustain and support their family. They settle disputes between women, they only take issues outside when it is beyond what they can handle.

Age Grade (Achiokolobia)

The age grade association, for our understanding, it equalled a task force, which was given a special mandate in the indigenous in the community. A taskforce in that context was an organized labour unit working for the development of the society.

They are charged with; building and repairing of roads, tidying up the market square, clearing places and shrines, and protecting lives and properties, summons members of the community to meetings, encourage oneness, unity and every other thing that could help in mitigating conflicts, and instilling social harmony and oneness.

The age grade often seeks for the wisdom and proficiency of the elders in handling cases that are beyond them. The age grade summons offenders to the scene of conflict resolution, watch over the behaviour of the parties to the conflict at the scene of reconciliation, ensuring adherence to the application of the norms and customs governing conflict resolution and especially protecting the lives of the crowd spectators present at the scene of conflict resolution.

Theme 6: Indigenous court institution

Another institution of great importance is the Indigenous Moot Court; this group plays an indispensable role in the maintenance of the community's judicial legal culture. In line with the participatory observation, when a particular member is accused of, or having committed a particular crime, he or she is being summoned to the court, in order for reconciliation to be made through alternative dispute resolution and a lasting peace to be restored.

The native court is not a standing body, in other words the actors in this judicial institution is not formation of people who are always together, however, they gather anytime there are/is case (s), succinctly put, they are situational assemblies which disband when any case concluded, because, argumentation, persuasion and compromise determined the outcome of a dispute, the personal talents of members are usually very important, and particular men from the pool of

elders appeared as councillors in case after case, an individual's ability to serve on such moot or occasion is not contingent on his membership in a particular class or set without exceptions. Informants stress ability rather than set or class status as the major criterion in moot participation or leadership.

4. Discussion

The study identified that the people of Etutekpe-Okpo have a distinct legal culture which is composed of seven main components. These include political institutions, ancestors and deities' institution, African Traditional Religion's institution, Council of Elders and Family Heads institution, family system institution, social institution and indigenous courts institution.

From the results, ancestors and deities play a significant role in maintaining law and order. This is because deities are believed to have supernatural powers to protect, punish and bless community members. To neglect these forces or an undue tapping of the forces would always carry negative implications. Moreover, they can trigger off conflicts and afflictions within the family, lineage and society once they do wrong or sin (Ikechukwu, 2017; Titova et al., 2017).

In Etutekpe-Okpo, the ancestors (Ibegwu) are also powerful forces; offence against them often comes with terrible punitive measures, sometime even propitiation is not enough to save the erring member's life. Ancestors may be called upon to resolve a dispute, to put it in another way; disputants may carry out their arguments in the language of ancestral authority. Specific ancestors hold primary authority over groups, larger than households (that is larger than those headed by living parents). African ancestors are watchdogs of morality, discipline and facilitators of peace and harmony in African universal space, enhancers of social ethics and ethos, and custodians of the knowledge and wisdom of conflict resolution (Ajayi, Buhari, 2014).

Thus, Sangree (n.d) described the role of the Tiriki elders in a succinct way;

"The judicial elders who habitually gather at the community centre in the mornings may always be prevailed upon by any man in the community to arbitrate a dispute. Younger people (boys and girls) and women customarily have their grievances' presented by an adult bother or father..." The above illustration shows clearly the norms of the Tiriki of Kenya which demonstrate that such system does not replicate itself alone at Kenya, but also have spread its tentacles on the Etutekpe-Okpo community. From the results, it could clearly understand that these seven components carried out significant functions (whether integrative or subsidiary) geared towards propelling development, peace and harmony.

5. Conclusion

The study explored the African legal culture among the Etutekpe-Okpo people. Results showed that their legal culture include political institutions, ancestors and deities' institution, African Traditional Religion's institution, Council of Elders and Family Heads institution, family system institution, social institution and indigenous courts institution. There is a need for African educational institutions to examine local legal cultures in Africa.

6. Conflicts of Interest

The authors declare the work has no conflicts of interest.

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