COLONIAL UROMI: THE NATIVE COURT AND THE COMMERCIALIZATION OF INDIGENOUS MARRIAGE PRACTICES IN HISTORICAL PERSPECTIVE

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Abstract

The colonial Native Court, as an agency for social transformation, used the instrument of the Ishan Civil Code to commercialize indigenous marriage practices in Uromi. The Code was the official policy of the Native Court to assist members in addressing marriage related conflicts among the indigenes. The implementation of the Code made a big impression on indigenous marriage contract. Cultural taboos associated with the people's marriage practices were compromised, thus turning women into 'commodities' that could be bought and resold. In the final summation, what resulted therefore was that the Code weakened most aspects of Uromi indigenous marriage practices thereby encouraged adultery, divorce and dysfunctional matrimony.

Keywords: Civil Code, Colonial, Commercial, Marriage, Uromi

Introduction

The presence of colonial rule and other associated European values in Africa fundamentally set in motion, chain of events that have come to influence most aspects of contemporary African way of life. It is often difficult to posit that there are aspects of African practices that could be said to be wholly African either in composition or celebration. In that light we share the opinion of Wilson and Bird that "colonization refers to both the formal and informal methods (behaviours, ideologies, institutions, policies, and economies) that maintain the subjugation or exploitation of Indigenous peoples…*Colonization is an all-encompassing presence in our lives."*[1] (Emphasized)Thus colonialism impacted on different aspects of the lives of the colonized people. This situation also played out in Uromi.

One aspect, among others, that colonial legacy is still being felt is in the area of indigenous marriage practices. For example, Mawere and Mbidi have identified colonial legacy as one of the biggest factors militating against indigenous marriage practices among the Shona of Zimbabwe,[2] just as in the Uromi situation. Yet, marriage is an important rite of passage in Africa. Kwasi Agyeman sums up the relevance of marriage in the African communal way of life as he emphasized that marriage is the most important socio-cultural foundation of any African society. Kwasi posits "I don't know if there can be any society without family. I don't know if there can be any family without marriage. So I don't know if there can be any society without marriage."[3]

Agyeman believes that the values in African marriage practices are divine, natural, cultural and social. It is divine, because it is believed to have been instituted by God as a natural response to procreation, manifested in cultural practices that socially bring families together.[4] Agyeman concludes "an authentic unadulterated African marriage is truly a social union of not only a man/woman love affair, but more so, it is a social union in a larger sense, involving families of the two lovers."[5] The perception Uromi people had of the marriage institution were consistent with the views expressed above.

The People of Uromi

There are about seven accounts of the origins of the people,[6] but Bradbury's account seems to have encapsulated all other accounts. Bradbury identifies three channels through which migration entered into Uromi. These are the sky, ground and rivers. These channels of passage, though appear comical, reveal in clear terms a proper understanding of the various traditions of origins.[7] A correct interpretation of Bradbury's account demonstrates that those who claimed to have descended from the sky reflect the Benin origin, a powerful and influential neighbouring community. This is so, because, the early Benin kings of the first period in Benin monarchial history are referred to as the Ogiso-sky gods.[8] Those that emerged from the ground attest to the aborigines in Uromi that have lost the history of its origin, thus representing the original inhabitants of the region, while the river origin tradition indicates the migratory history of those who came from across the Niger-Benue confluence region of Nigeria because there is no major body of natural flowing water in the form of rivers or lakes in Esan-the larger ethnic group that the Uromi belong. The claim to have come from the river represents migrants from outside Esan region.

The people are located in the Esan region of south-south Nigeria. The colonial authority in some cases spelt Esan as Isan, Ishan or Isa depending on the familiarity of the correspondent but the right spelling is Esan pronounced as A-SAN. However, Esan and Ishan are used interchangeably in our discussion.

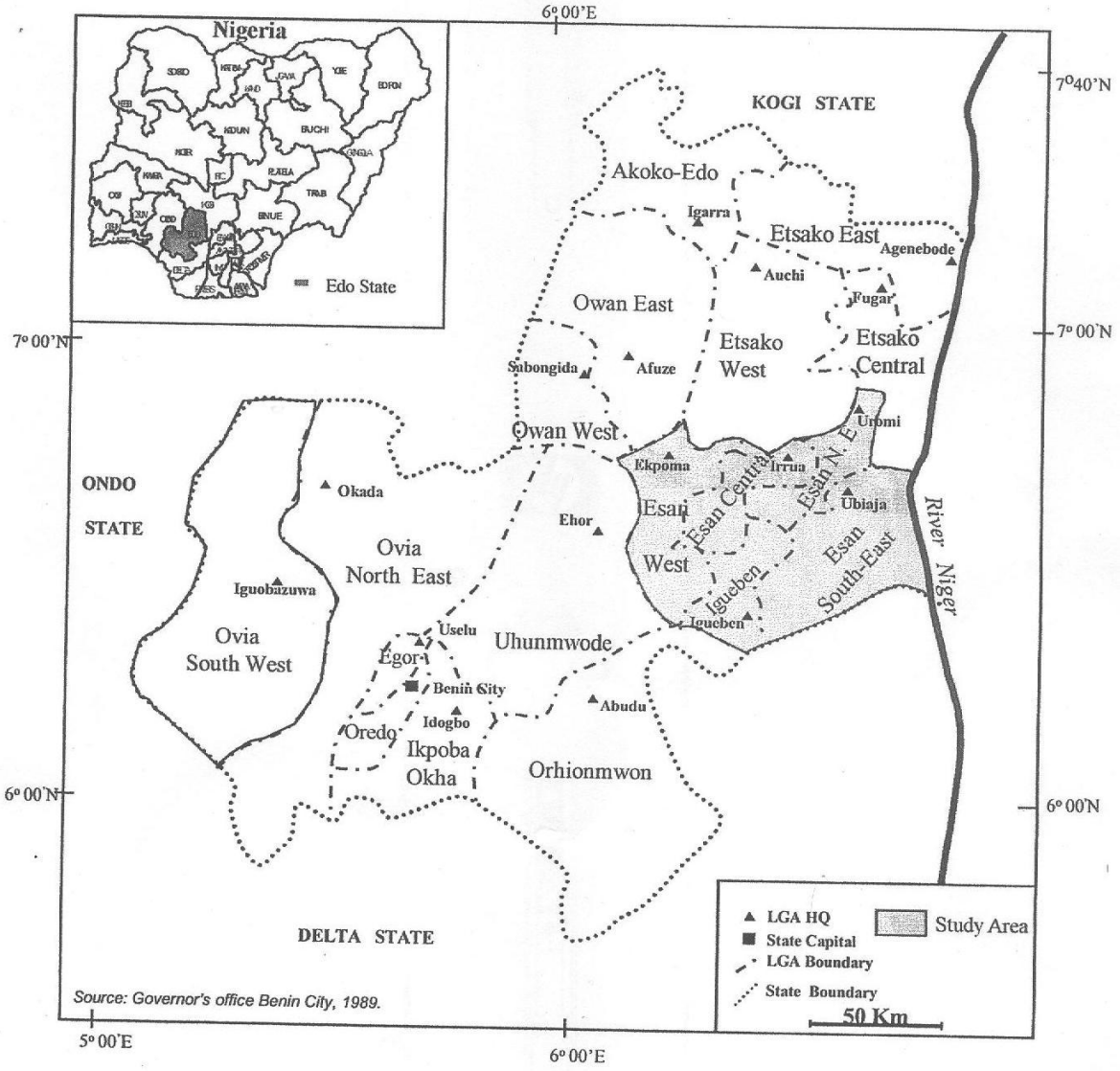


FIG. 1: EDO STATE SHOWING ESAN LAND

There are about thirty-two well developed communities in the Esan region situated within longitude $5^{0}30^{1}7^{0}3^{1}$ and latitude $5^{0}30^{1}$ north and $7^{0}30^{1}$ east of Benin, the capital City of Edo state, Nigeria [9] occupying a land mass covering about 2987.52 square kilometers.[10] While Uromi seats between latitude $6½^{0}$ north and 7^{0} west of the equator with longitude 66^{0}C and $6½^{0}$ of the

Greenwich Meridian[11] comprising about twenty developed villages located approximately on a landmass of not more than 60 square miles.[12]

Indigenous Marriage Practices

There were six pre-colonial culturally accepted marriage practices of which three have survived into post-colonial Uromi. They are Ebee (betrothal), Egbase (inheritance), Iregbe-Iyaha (pawning), Ba-Igben (seizure/cohabitation), Egho (dowry payment) and Areobhau (home wife). Those that have survived are the Ebee, Egbase and Egho. It is important to discuss these practices in order to appreciate how colonial policies affected the marriage institution.

Ebee

Though still in existence but not as popular as Egbase and Egho in contemporary Uromi society, it involves a suitor expressing his intention to marry from a particular family. Once the mother of the home is pregnant, the suitor indicates interest in the fetus, hoping it would be a girl. If a girl, the suitor continues to render unpaid manual services to the girl's parents until the girl comes of age. It is then the suitor can now perform the required marriage rites before she is married to him.[13] The cultural essence of this marriage practice is to curb promiscuity and provide enough time for the girl's parents to prepare her for the responsibility of matrimony.[14]

Egbase

This is in line with the practice of primogeniture since the Uromi society is patriarchal. When a man dies, the eldest surviving son inherits the deceased assets and liabilities, which include wife (ves). But, if the deceased had just a wife, who is the mother of the heir, the woman is married out to the deceased younger brother after the burial rites have been performed. This practice serves as a form of social security for the deceased estate.[15]

Iregbe-iyaha

This practice was not originally intended to be a method of marriage, but unfavourable circumstances created the chances of adopting pawning as another channel of marriage. A child of any sex could be pawned by households in need of financial assistance or any form of aid.[16] The practice involved the child (in most cases female) used as collateral to obtain assistance, and

at the expiration of the agreed terms of contract, if the debtor failed to meet up with his side of the bargain, the creditor could adopt the child as a wife and later fulfilled the rite of marriage to the debtor's family.[17]

Egho

This practice requires payment of money as dowry by the family of the groom to the family of the bride. It is believed to be a contemporary practice than others already discussed.[18] The practice of dowry payment was in use before the introduction of colonial rule as items other than money constituted the dowry, but it was the colonial regime through the native court that introduced a specified amount of 10 pounds as bride price.[19] For the sake of our discussion, dowry instead of bride price is used as contained in the Code. However, dowry payment has become one of the most traditionally recognized means of legalizing indigenous marriage in Uromi.

Ba-igben

Unumen posit that this type of practice was tantamount to adoption. He avers, "any man could 'seize' a woman he liked, without the consent of the girl and her family. All that he required was lock her up in his house and forcibly impregnate her. The marriage became legal once she had been forcibly impregnated. He could then later report to her parents and pay the appropriate dowry."[20] It is important to clarify some misconceptions in Unumen's presentation. In the Uromi indigenous marriage practice, no marriage was considered legal even if the girl was impregnated unless the dowry was first paid. This implies that any pregnancy before dowry payment belonged to the girl's family. However, the point here is that the usage of the term seizure is to demonstrate that the Uromi tradition did not culturally recognize cohabitation as a proper and respectable form of marriage.

Areobhau

The word literally means "keep at home." It was a practice whereby a man without a biological male-child would permit his eldest daughter to remain at home without being legally married, but the daughter was expected to encourage male acquaintances and any child or children (hoping for male) from that liaison belonged to the family household of the girl. This

practice provided the avenue for families to have male children because of the patriarchal mentality of the people.[21]

Marriage Rites

The various indigenous marriage practices discussed have similar marriage rites except those of seizure and *areobhau*. The nucleus of the family system in Uromi is anchored on the ability to maintain the marriage system. Marriage in Uromi culture, as it is in Africa, is contracted between families on behalf of the bride and groom, and not the individuals involved. In fact, parents can and do determine one's choice of partner, because the Uromi marriage institution is such that married couples are not only accountable to themselves, but also the members of their kinsmen. Informal marriage negotiations would have been undertaken between families' representatives of the bride and groom to ascertain whether both families can marry from each other's family units. The enquiry is important to avoid incest before the proper formal marriage rites will commence. On an agreed day, both the nuclear and extended family members of the lovers will converge at the bride's family compound to seek for the hand of the bride in marriage. The visitors are welcomed by the bride's family by entertaining them, while in turn the groom's family will also present its own gift of entertainment before stating the major reason for visiting the home of the bride. Acceptance of the groom's gift signifies that discussion on the marriage formalities can commence, which will lead to an agreed bride price (dowry), not exceeding #25 naira (less than fifty cent) presented by the groom's family to the bride's family.

It is important to state that it is only when the dowry is accepted that the marriage formalities can be said to be concluded, because the dowry represents a form of covenant between the couple and the contracting families. The bride is then handed over to the family head of the groom who will in turn hand over the bride to the groom. This act is to underscore the role of families and not individuals in marriage contract. Both families will offer traditional prayers with kola nuts and gin for libation for the newly wedded couple invoking the presence of the ancestors and God to witness and bless the union with children, wealth and other necessities of life.

The head of the groom's family (which is usually the father) traditionally 'marry' for his sons, and gives consent to his daughter's request to be married out.[22] Culturally, the father marries for his male children because he pays the dowry and not the groom, which signifies that

the bride is married into the family. In the case of death of the groom at any point in the marriage, the bride is handed over to any member of the family as part of the inheritance rite. Given the active involvement of the families of the groom and bride in the marriage process, it becomes easy to appreciate that marriage is a natural communal affair, rich in socio-cultural activities and deeply spiritual in Uromi.

When there are matrimonial crisis of any temperament, the families of the couples are involved in mediation, which means the extended family unit is the first judicial point of call. There is need to emphasis that the families are involved because of the communal nature of the society and most importantly, the Uromi marriage culture just as most African communities do not contemplate divorce, in fact divorce is a taboo as it brings shame to the divorcees and social complex to the children if the union has produced any. But, with the introduction of the native Court, the marriage practice in Uromi began to be redefined as emphasis in contracting or resolving matrimonial related crises was redirected from communal engagement to individual proclivity through processes alien to the peoples' indigenous culture and tradition.

Introduction of the Native Court

As part of the British imperial conquest of groups in Nigeria, lMajor Heneker led a ferocious British Expeditionary Force in 1901 that laid siege on Uromi for over 45 days (March 16, 1901 to April 30, 1901) before the community was defeated.[23] With the effective occupation of Uromi by the British, the territory of Ishan had come under colonial rule. Meanwhile, the whole of Nigeria had earlier been administratively divided into Provinces headed by Residents with the former Benin kingdom being one of the Provinces with headquarters in Benin City. The Benin Province was divided into five divisions of Benin; Ishan; Kukuruku; Agbor and Asaba headed by District Officers (D O), while the Ishan Division was further sub-divided into five districts of Ubiaja; Uromi; Irrua; Ekpoma and Ewohimi under the supervision of former kings with headquarters at Ubiaja. The colonial regime introduced two pillars of administration to administer the Nigeria territory; these were the Native Administration and Native Courts. The Native Administration replaced indigenous form of political governance while the Native Court took over indigenous judicial practice.[24]

Sir Ralph Moore, High Commissioner and Consul-General of the Niger Coast Protectorate, provided the legal framework for the establishment of native court in the whole of

Southern Nigeria through the promulgation of the Native Courts Proclamation of 1900 amended in 1901.[25] As noted in the Proclamation:

The functions of the Court were explained in clause XII of the Proclamation which reads "the courts were to administer 'Native' laws and custom not opposed to natural morality and humanity and any new law or modification of old laws sanction by the government. They were to have jurisdiction over such communal and civil cases to which 'native law' applied and in which all the parties concerned were natives.[26]

Ralph Moore explained the objective of the Native Courts in 1903 when he said "it is on these Courts that the Government mainly relies for the dispensing of justice among the natives, for the establishment of peace and good order in the territories, for the carrying out of all Administrative and Executive work…and for the furtherance of trade, education, agriculture, e.t.c throughout the territories."[27]

The Native Court in Uromi

The function of law in any society is to maintain, protect and strengthen societal values. An offence in Uromi tradition would be any form of act either by omission or commission that runs contrary to the people's way of life. Therefore, law is a functional instrument of social control meant to keep the peace or bar infraction to society's social order.[28] In the traditional pre-colonial Nigerian communities, the function of law was, as Adewoye has noted, to safeguard the total wellbeing of the community which included the spiritual, economic, social and political character of the community.[29] Correspondingly, the function of law in the Uromi society is to serve as a form of social control as noted by Butcher:

ancient administrative and judicial system were highly organized, many duties being definitely allocated rather than performed by casual appointment[30]… that the whole village or 'ward' was interested in the settlement of disputes, and that every man was tried by his own people. This is very different from the present system of a bench of rotationary members.[31]

The first Native Court to be established in the Ishan Division in 1903 was sited at Uromi as a Grade B court.[32] Members of the court were encouraged to participate in court proceedings with the introduction of sitting fees. The President or Acting President received 10 shillings, while other members of the court got 5 shillings respectively. The revenue for payment was derived from fines and fees collected by the court.[33]

Implementation of the Ishan Civil Code

It is important to establish the fact that the core objective of the court was basically to generate revenue to sustain colonial activities, and in other to achieve that goal, court members were enticed with the provision of sitting fees from income generated from the court. The desire of court members to enrich themselves through sitting fees and not necessarily to meet the objective of the court affected the manner cases were handled. As shall be demonstrated, the Code became an instrument in the hands of the court members to exploit and corrupt the judicial process as they mishandled matrimonial related cases, which subsequently led to the commercialization of marriage practices.

W. B. Rumann drafted the Code in 1921 as the District Officer (D O) in the Ishan Division, but it took effect in 1923.[34] Rumann thought that the Code would make it easier for the Native Courts to dispense justice on matters affecting marriage practices in Ishan.[35] Justifying the rationale for the Code, he argued:

To the best of my knowledge, the principle embodied in this code… and the sole object was to codify what in justice could be applied to rich and poor alike…The sole idea of setting down the law and custom which was to get something workable to assist the native courts in dispensing justice …[36]

Impact of the Code on Indigenous Marriage Practices

There is no doubt that before the Code, Uromi marriage institution had begun to experience some changes in its cultural practices due to the impact of new beliefs, aspiration and life style (occupational, economic, social and political) because of the active presence of Western education, exposure and Christianity. But the changes were not fundamental as compared to the impact of the Code when it came into force. For example, the practice of pawning, seizure, and *areobhau* have become culturally unpopular in Uromi because it is argued that it bothers on the question of fundamental human right of freedom of choice.[37]

The Code contained nine provisions, which dealt with the matters of infant marriage, divorce, custody of children, inheritance, adultery, runaway (absconding) wives, arewa (meaning *areobhua*), rights of heads of families and marriage registers.[38]

Infant Marriage

The Code stipulated that infant marriage could be dissolved. That created the atmosphere where women took advantage of the circumstances to randomly file for divorce under the disguise that they were married out without their consent. For example, in a case filed before the Uromi Native Court, Omoduga petitioned the D O seeking for his intervention to be freed from a forced marriage. According to her, she was betrothed to Ebomiele at the age of three months. She cited the excuse that she was ignorant of the marriage transaction and, therefore, would not be part of it and her request was granted.[39]

The idea of infant marriage has its own universal appeal, for example, the Hindus of India have defended the institution of infant marriage "on the ground that one function of it is to prevent the dangers of pre-marital sex relations of girls."[40] The Hindus philosophy behind the institution of infant marriage is not different from that of the Uromi tradition because girls were not supposed to experience sex until after circumcision, but early sexual experiences became a frequent occurrence.[41]

The practice of infant marriage remained unabated in the Ishan Division and the whole of Southern Province in spite of the Code and that compelled the Lieut. Governor of the Southern Provinces in 1927 to propose "The Marriage of Girls under Sixteen years of Age: Proposed Native Court Rule" to curb the practice.[42] Unfortunately, his proposal did not see the light of the day because it was thought that the Code would eventually eliminate the practice.[43] However, with the passage of time, the colonial authorities observed that the practice of infant marriage took a different dimension as betrothed girls were sent to their husbands' families at very tender ages to be nurtured, as would be wives.[44] This again prompted the Secretary, Southern Provinces, in 1944 to seek for the opinions of the Residents and DOs on the expediency of protecting young girls from pre-mature sex through the "Child Prostitution Act" which was adopted by the Benin Province.[45] The indigenous practice of infant marriage is still alive in post-colonial Uromi because of its social relevance.

Divorce

The Code provided that divorce could be granted by the court on the repayment of 10 pounds by the woman to the man to cover the marriage expenses. This provision created a lacuna for easy divorce. For example, in 1939, Mr. Iyu of Uromi petitioned the DO that the verdict of

the Uromi Native Court in a case where he was a co-plaintiff was partial. In his complaint, he stated that Eraruse, wife of Elonga promised to marry him if he (Mr. Iyu) could pay back her dowry through the Native Court to her husband, Elonga. Indeed, Iyu gave Eraruse about 3 pounds to summon her husband to Court and to refund part payment of the dowry. Rather than grant Eraruse's plea, the court awarded a cost of 3 pounds as damages against Iyu, the co-plaintiff, to be paid to Elonga and ordered Elonga to take his wife, Eraruse, home.[46]

Another example could be gleaned from the correspondences of Augustine Ibadode and that of Emmanuel Ifon to the DO Ishan Division. Augustine sent 5 pounds and 10 shillings through the office of the DO as refund of part-payment of dowry to Ejedawe, the husband of Izinegbe. Augustine stated that Izinegbe agreed to marry him, so the money sent was a part-payment of dowry Ejedawe paid on Izinegbe. While Mr. Emmanuel harboured Maria Otekpe, wife of Mr. Okojie and later sent the sum of 8 pounds to Mr. Okojie as refund of part-payment of dowry Okojie had paid on Maria.[47] The emphasis we want to buttress with these cases is not about the dubious ambition of Mr Iyu, or the wise judgment of the Court, or the correspondences of Augustine and Emmanuel, but the fact that it was easy to seek for divorce on any flimsy excuse because of the provision of the Code.

At a time, the colonial government became troubled with the spate at which divorce cases were on the increase, which prompted Mr. J.A. Maybin, Secretary to the government, to comment:

There is a great rapidly growing laxity in respect of marriage. Divorce is now so simple that girls marry and divorce in rapid rotation a considerable number of men. No proof is required by the Native Courts that there are any grounds for divorce. All that takes place is that the paramour has to repay the husband the dowry and the marriage is then dissolved.[48]

It is interesting to note that before the introduction of the Code in 1932, a study was conducted in 1915 by the colonial regime which noted "true native marriage is indissoluble. Service is rendered and payment is made for a woman and she passes from one family to another. Divorce is so far as I can make out unknown to native ideas .. . ."[49] Even, the Resident, Benin Province testified to the fact when he avers: "generally speaking Divorce is foreign to Native Law and Custom – but it has gradually crept in since the inception of our native court system."[50]

Adultery

It is important to clarify the concept of adultery in Uromi tradition. The Uromi tradition considers some of the following actions of a woman as adulterous; holding another man's hand or vice versa, exposure of the breasts and laps, allowing another man to jump over her legs; concealing gift items presented to her by other men; refusing to report attempted seduction, boldly comparing her husband with another man, actual sexual relations, sitting on the same bed with another man and cuddling.[51] It is a traditional belief in Esan that an act of adultery on the part of the woman would provoke the ancestors to visit the woman's children and husband with dreaded diseases and in some fatal, unless the woman quickly confesses her adulterous activities. As Unumen has rightly noted, a confessed adulteress would:

The adulteress, shaved off her hair and stripped of her clothes with a heavy load balanced on her head, would be made to dance round the village. The stinging nettle leaves would also be wrapped round her waist to make her uncomfortable. When the women were exhausted from humiliating and lashing the adulteress, they [would] take her to the house of the leader where she was made to swear [oath] not to have extra-marital intercourse any longer.[52]

The above measure was intended to curtail and prevent women from committing adultery. However, with the introduction of the Code, all other forms of Uromi considered adulterous offences and punishment were discarded, except actual sexual intercourse. In the case of Agbokhase vs Aremiokhai in the Uromi Native Court held in 1942, Agbokhase accused Aremiokhai of committing adultery with his wife. The Court found the defendant guilty and only ordered him to pay 2 pounds to the plaintiff to perform purification act for his wife.[53] In some instances, it would be refund of dowry. It is instructive to note that before the implementation of the Code, the Secretary, Southern Provinces sought to know from the Resident, Benin Province, his thoughts on the proposed native courts Marriages and Adultery Rules because "the Acting Governor…is of the opinion that a *very great deal of patient investigation* (emphasized) must be carried out before we can feel ourselves to be properly equipped, to deal with this matter…[as regard] what the old customary law was before the introduction of the Native Courts.[54] It is worth noting that adultery cases in the Uromi native court were one in 1913 and three in 1914, while the whole of Ishan Division only handled about 17 cases before 1913.[55] But between 1913 and 1944, adultery cases rose in an alarming proportion to 150 in 1939, 179 in 1943 and 247 in 1944.[56]

Custody of Children and Absconding Wife

The Code mandated that children born anywhere belonged to the man who lawfully impregnated the woman, except divorced granted by the Native Court. This provision affected the Uromi custom as it raised the question of paternity and the destruction of the *Areobhua* indigenous practice of marriage. The question of who took custody of the children born in a native marriage when there was divorce, separation, or elopement of the woman was not an issue in pre-colonial Uromi as the custom properly defined the condition for paternity. The Uromi custom in the time past only recognized as father of the children, the man who went through the proper marriage rites and paid the dowry. Without that, all offspring from a woman belonged to the woman's father and family. That is, if a divorcee got pregnant for another man when the dowry had not been returned, children from that marriage belonged to the first man that paid the dowry and not the man that impregnated her.[57] The culture made it so in order to discourage divorce and restrain on the part of both male and female from adultery.

The colonial authorities did not recognize the cultural practice that allowed a "husband on the elopement of his wife with another man can at any stage claim the return not only of his own children but of all those born prior to the refund of his dowry."[58] And therefore codified that "if a man's wife leaves his house he must bring her back within a period of three years or forfeit all claims over her and children."[59] With the introduction of the Code, it was inevitable to avoid conflict of interest between indigenous and colonial norms on the right to custody of children as members of the Native Court could not completely detach their cultural sentiments from some of their activities. For example, in the case between Eidoele (F) vs Eko (M) of Uromi, held in the Uromi Native Court in 1937, Eidoele the plaintiff petitioned the Court to declare her two children born to Mr. Ajayi Okaigun as the legal children of Ajayi and not Eko as claimed by Eko, the defendant. In the narrative, Eko had paid dowry on Eidoele before she bolted away from Uromi to marry Mr. Ajayi in another community where she gave birth to two children. After about 12 years of co-habitation with Ajayi, Eidoele decided to come back to Uromi only for Eko to lay claim to the children as his. The Court gave judgment in favour of Eko in accordance with the Uromi customary law that he who pays the dowry is the legal husband and father of the children born by the woman.[60] This judgment ran counter to the provision of the Civil Code

dealing with this section. The inconsistency of the Native Court also manifested in the area of absconding wife.

Before the enforcement of the Code, it was a high risk for any man to co-habit with an absconded wife because children from such relationship belonged to the one that paid the dowry irrespective of the years of co-habitation. Therefore, husbands of absconded wives kept their cool knowing that once found, such women would still belong to them. But, with the provision of the Code, husbands became frantic to recover their absconded wives within the stipulated Code provision. The case of Okosun of Uromi captures the pains, frustration, risk and disappointment associated with the Code's provision on absconded wife. The attempt of Okosun to recover his absconded wife took two years of litigation between 1939 and 1941, an attempt that claimed his life. According to the information gathered from the series of correspondences, Okosun found his absconded wife, Obiata, leaving with one Tom Iraboh with two children at Otta in Abeokuta Province of Nigeria and therefore, demanded for their return to Uromi. Okosun was instructed by the DO in a letter dated August 4, 1939 to pay the sum of 3 pounds and 11 shillings to offset the cost of transportation and warrant of arrest fee to enforce the extradition of his claims from Abeokuta which he obliged, but unfortunately, he died shortly on reaching Abeokuta Province. However, Obiata was extradited and on getting back to Uromi, she was granted bail by the court.[61] When Ekeleyede, Okosun's next of kin requested from the DO, in a correspondence dated February 5, 1941, of his interest to continue with the claim of Okosun's estate, he was rudely rebuffed in the DOs reply "since Okosun has died the judgment in his favour has also died. If you claim any rights as Okosun's heir, you should yourself bring action in court."[62]

Inheritance Fee

The Code prescribed an inheritance fee, contrary to Uromi indigenous custom and traditions. It stipulated that inheritance fee on each inherited "woman to the lawful guardian or parents of the woman" in the Division as follows

Districts	**Inheritance Fee (in pounds)**
Uromi	20
Ekpoma	20
Ubiaja	10

Irrua	5
Ewohimi	5

The Code also added that "if any of the deceased's wives refuse to marry the next of kin they may be allied to other members of the same family, but in order to marry outside the deceased's family *they must first obtain divorce in the native court from the next of kin.*"[63] (emphasis mine).

In the Uromi tradition, it is difficult to inherit, or permitted to divorce inherited wives. Before a wife is inherited by the next of kin to the deceased (which is usually the biological eldest surviving son), he must first perform the burial rites of the deceased. According to Okojie, the burial ceremony is "necessary to have full right to inheritance of the person he had just honoured.[64]

There are situations that the heir may not be interested in conjugating with the inherited wives yet, he must perform the ceremony and cannot traditionally divorce the wives. In such a situation, the heir will have to marry them to any member of the immediate family, even to a minor. If the wife chooses to leave the family, she will have to return the dowry to the family, otherwise children born by her thereafter would still belong to the deceased, unless dowry is returned before future procreation by her.[65] When we consider the processes involved in the Uromi inheritance law on property and wives, it becomes obvious to contemplate the damage done by the Code. As earlier stated, once a woman is married, she remains married to the family even after the demise of her husband. So, for the Code to stipulate that inheritance fee be paid on inherited wives amounted to re-marriage, which was contrary to the people's indigenous culture and tradition. To seek divorce through the native court amounted to circumventing indigenous due process because, it is the woman's family and not herself that would return the dowry to the deceased family if not inherited.[66]

Marriage Register

The Code prescribed that marriage contract should be registered in the Native Court. Rumann explained that the registration of marriage was;

a practical method of protecting Ishans… from the flagrant injustice of their own tribes….who invariably find it more convenient to repudiate the marriage contract when one

party is absent for any length of time and make double profit on their daughters by getting a second dowry paid by another husband.[67]

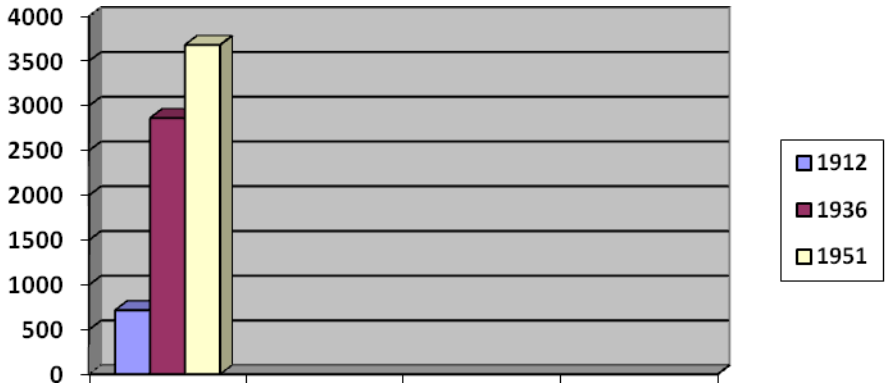
In brief, Rumann presented a horrible and false impression of the marriage system in Ishan. Rather it was the colonial introduction of monetized dowry that provided the chance for dubious activities in Ishan indigenous marriage practices. In the Uromi tradition, the means of 'registry' a marriage is the acceptance of dowry in kind by the family of the bride in the presence of elders from both contracting families. The acceptance of dowry signifies that the marriage has been 'registered' by the living and dead (living) ancestors. This belief is reflected in the comments of the DO Kukuruku Division in one of his correspondences with the Resident, Benin Province that on native marriage, "the payment of a bride price [dowry] is the necessary and sufficient condition in a contract of marriage."[68]

The practice of marriage registration did not constitute any problem because the Code made it voluntary for indigenes. However, things began to take new dimension when it was thought that one of the surest ways to curb "the growing prevalence of divorce and the increase in moral laxity" in marriage was to make it compulsory that native marriages be registered.[69] In that regard, the Native Authority Ordinance of 1943 was amended to include The Native Authority Registration of Marriage Order 1944 that legally made it compulsory that marriages contracted before the enforcement of the Order could be voluntarily registered without any cost, while those contracted after the Order were registered with a fee of 2 shillings and 6 pence.[70] One of the saddest impacts of marriage registration on the people's psychology was that it reduced the Uromi indigenous marriage practice to mere legality devoid of the cultural attachment associated with the institution.

Conclusion

The conquest of Uromi and the imposition of colonial rule transformed some cultural practices in Uromi, especially the indigenous marriage institution. The indigenous arbitration system provided justice for the people of Uromi because it depended solely on cultural precedent to adjudicate in disputes. But, the colonial established Native Court system introduced new elements that fundamentally affected the Uromi way of administration of justice. With the introduction of the Native Court and implementation of the Ishan Civil Code in 1923, Uromi marriage practices came under attack. The court robbed the community of utilising indigenous

alternative dispute resolution mechanism customarily rested in heads of the families to mediate on matrimonial crisis and conflicts, while the Code weakened the sacredness of marriage in Uromi through the Native Courts that commercialized the resolution of matrimonial cases.



Increase in matrimonial related cases in Uromi

In fact matrimonial related cases in the Native Courts rose astronomically from 716 in 1912 to 2,862 in 1936 and 3,679 in 1951.[71] In the final summation, the increase in these cases was occasioned by the need to generate revenue and in the process compromised Uromi indigenous marriage practices.

References:

Quoted in E. Neeganagwedgin, "Chattling the Indigenous Other: A Historical Examination of the Enslavement of Aboriginal Peoples in Canada", *AlterNative: International Journal of Indigenous Peoples*, 8 (1), 16.

M. Mawere and A. Mbidi, "Relevance of the Shona Customary Marriage Practice of Kukumbira", *Journal of African Studies and Development*, Vol.5, No. 4, 2010.

K. Agyeman, "Marriage: The Most Important Social Value", in Maduabuchi Dukor (ed.), *Philosophy and Politics Discourse on Values Politics and Power in Africa* (Lagos: Malthouse Press Limited, 2003), 113.

Agyeman, 113.

Agyeman, 116.

See chapter one of O.S. Ehiabhi, "The Impact of Colonial Rule on Uromi Political and Social Institutions." Ph.D. Dissertation, Department of History and International Studies, University of Benin, 2012.

Quoted in J.I, Osagie, "Economic Development in Esan in the Colonial Period." Ph.D. Dissertation, Department of History, University of Benin, 2007, 4.

J.U. Egharevba, *A Short History of Benin* (Ibadan: Ibadan University Press, 1968), 1-6.

A.I. Okoduwa, 'Geographical Factors in the Evolution of Esan Polities,' in A.I. Okoduwa, (ed.), *Studies in Esan History and Cultures*, Vol. 1 (Benin City: Omo Uwessan Pub. Ltd., 2007), 1.

M.O. Omo-Ojugo, *Esan Language Endangered? Implications for the Teaching and Learning of Indigenous Languages in Nigeria*. Inaugural Lecture, Ambrose Alli University, Ekpoma, Edo State, Nigeria, 2004, 4.

H.L.M. Butcher, *Intelligence Reports in Ishan Division of Benin Province* as published by The National Archives of Nigeria, Ibadan, 1982, 240.

Butcher, 240.

Interview with Pa. Alfred Odianosen, 70, farmer, Ukoni, Uromi, 11 March, 2008.

Interview with Peter Ehiabhi, 70, retired civil servant, Benin, 3 March, 2008.

Ehiabhi

Ehiabhi

C.G. Okojie, *Esan Native Laws and Customs with Ethnographic Studies of the Esan People* (Benin: Ilupeju Press Ltd., 1994), 145 and A.A. Otoide, *The Ethnic Society of Uromi in Ishan Division Midwest State Nigeria, 1969*. Unpublished B.A Long Essay, 9-10.

Ehiabhi

National Archives, Ibadan (NAI), Benin Province (BP) 303/1915: Correspondence from the Colonial Secretary's Office (CSO), Southern Province to the Commissioner, Benin Province, dated 18 June, 1915.

J.U. Unumen, "Colonialism and the Liberation of Women in Esanland. Presented at the International Conference on Colonial African and its Legacies: A Re-appraisal. Organized by the Department of History and Archaeology, Ibrahim Badamasi Babangida University, Lapai, Niger State, Nigeria, November 28 – December 1, 2010.

A.P. Ojiefoh, *Uromi Chronicles 1025-2002 History Culture Customary Law* (Nigeria: Aregbeyeguale Pub., 2002), 163.

Otoide, 4.

NAI: CSO 1/2/15: Southern Nigeria Dispatches to the Colonial Office 1901.

O. Adewoye, *The Judicial System in Southern Nigeria, 1854-1954* (London: Longman Group Limited, 1977), Chapters 2 & 3.

Osagie, 57-58.

Osagie, 60.

Quoted in Adewoye, 31.

Adewoye, 1-5.

Adewoye, 1

Butcher, 238.

Butcher, 266.

Butcher, 251.

NAI BP 258/18: 'Ishan Native Administration/ Inauguration of'

NAI Ben Prof. 99/1930: *Marriage Customs Registration of Native Marriages*

NAI Ben Prof. 260/1921: *Ishan & Ora Civil Code Re Native Law & Custom Concerning Marriage & Inheritance, etc*

NAI Ben Prof. 260/1921:

Ehiabhi

NAI Ben Prof. 260/1921:

NAI Ishan Division (ID): 215/IIA

R. Firth, *Human Types* (Great Britain: Sphere Books Ltd, 1975), 117.

Interview with Pa Akhabue, 85,community leader, Ukoni-Uromi, 13 April, 2008.

NAI Ben Prof. 68/1927: *Marriage Girls under 16 Years- Proposed Native Court Rule* .

NAI BP 69/1927: correspondence form the Southern Provinces Secretariat, Lagos to the Resident, Benin Province, dated 28th April, 1927.

Pa Akhabue.

NAI BP 1751: Native Children (Custom and Reformation Ordinance), confidential memo from the Secretary, Southern Provinces on the "Child Prostitution" dated 8th February, 1944.

NAI ID 215/ Vol V.

NAI ID 21V/V: Uromi Native Court Matters Affecting, correspondences from Augustine Ibadode to the DO dated 11th September, 1939, and that of Emmanuel Ifon dated 17th August, 1939.

Quoted in J. O. O. Unumen, "The Impact of Colonialism on Ishan Women with Emphasis on Marriage, Education and work," M.A. Thesis, Department of History, University of Ibadan, December 1988, 130.

NAI Ben Prof. 461/1915: *Native Marriage Proposal Affecting.*

NAI BP 126A, File I: Marriage Custom, Registration of Native Marriage, reply of the Resident, Benin Province to the issue raised by the Colonial Secretary dated 31st October, 1922.A similar situation existed in Etsakoland, see E.O. Erhagbe. "The Nigerian Traditional Judiciary and the Colonial Stress:The Case of the Etsako Clans,1919-1960", *Nsukka Journal of theHumanities,,15(2005),1-29.*

Okojie, 98. and Erhagbe.

Quoted in J. O. O. Unumen, "The Impact of Colonialism on the Status of African Women: The Ishan Example", *The Constitution A Journal of Constitutional Development*, 5 (2005), 95-96.

NAI ID 215/ Vol V.

NAI Ben Prof. 199/22: *Memo from D.O.*

NAI BP: 661/1914, Half Yearly Report on Ishan Division, June 1944.

Unumen, "The Impact of Colonialism on Ishan Women…, 121.

Okojie, 165.

NAI Ben Prof. 99/1930: *Marriage Customs Registration of Native Marriages.*

NAI Ben Prof. 99/1930:

NAI ID 215/Vol II: Uromi Native Court correspondence.

NAI ID 21V/V: Uromi Native Court Matters Affecting.

NAI ID 21V/V: Uromi Native Court Matters Affecting.

NAI Ben Prof. 260/1921:

Okojie, 179.

Ehiabhi.

Ehiabhi.

NAI Ben Prof. 260/1921: *Memo from the DO.*

NAI BP 1264/II: Marriage Custom: Registration of Native Marriage, Marriages Registration Rules, correspondence from DO Kukuruku Division to Resident, Benin Province, dated 9th September, 1938.

NAI BP 1264/II: Marriage Custom: .

NAI BP 1264/II: Marriage Custom:

Unumen, "The Impact of Colonialism on Ishan Women…, 126.

[1]Quoted in E. Neeganagwedgin, "Chattling the Indigenous Other:
A Historical Examination of the Enslavement of Aboriginal Peoples in Canada", *AlterNative: International Journal of Indigenous Peoples*, 8 (1), 16.
[2] M. Mawere and A. Mbidi, "Relevance of the Shona Customary Marriage Practice of Kukumbira", *Journal of African Studies and Development*, Vol.5, No. 4, 2010.
[3] K. Agyeman, "Marriage: The Most Important Social Value", in Maduabuchi Dukor (ed.), *Philosophy and Politics Discourse on Values Politics and Power in Africa* (Lagos: Malthouse Press Limited, 2003), 113.
[4] . Agyeman, 113.
[5] Agyeman, 116.
[6]See chapter one of O.S. Ehiabhi, "The Impact of Colonial Rule on Uromi Political and Social Institutions." Ph.D. Dissertation, Department of History and International Studies, University of Benin, 2012.
[7] Quoted in J.I, Osagie, "Economic Development in Esan in the Colonial Period." Ph.D. Dissertation, Department of History, University of Benin, 2007, 4.
[8] J.U. Egharevba, *A Short History of Benin* (Ibadan: Ibadan University Press, 1968), 1-6.
[9] A.I. Okoduwa, 'Geographical Factors in the Evolution of Esan Polities,' in A.I. Okoduwa, (ed.), *Studies in Esan History and Cultures*, Vol. 1 (Benin City: Omo Uwessan Pub. Ltd., 2007), 1.
[10] M.O. Omo-Ojugo, *Esan Language Endangered? Implications for the Teaching and Learning of Indigenous Languages in Nigeria*. Inaugural Lecture, Ambrose Alli University, Ekpoma, Edo State, Nigeria, 2004, 4.
[11] H.L.M. Butcher, *Intelligence Reports in Ishan Division of Benin Province* as published by The National Archives of Nigeria, Ibadan, 1982, 240.
[12] Butcher, 240.
[13]Interview with Pa. Alfred Odianosen, 70, farmer, Ukoni, Uromi, 11 March, 2008.
[14] Interview with Peter Ehiabhi, 70, retired civil servant, Benin, 3 March, 2008.
[15] Ehiabhi
[16] Ehiabhi
[17] C.G. Okojie, *Esan Native Laws and Customs with Ethnographic Studies of the Esan People* (Benin: Ilupeju Press Ltd., 1994), 145 and A.A. Otoide, *The Ethnic Society of Uromi in Ishan Division Midwest State Nigeria, 1969*. Unpublished B.A Long Essay, 9-10.
[18] Ehiabhi
[19] National Archives, Ibadan (NAI), Benin Province (BP) 303/1915: Correspondence from the Colonial Secretary's Office (CSO), Southern Province to the Commissioner, Benin Province, dated 18 June, 1915.
[20] J.U. Unumen, "Colonialism and the Liberation of Women in Esanland. Presented at the International Conference on Colonial African and its Legacies: A Re-appraisal. Organized by the Department of History and Archaeology, Ibrahim Badamasi Babangida University, Lapai, Niger State, Nigeria, November 28 – December 1, 2010.
[21]A.P. Ojiefoh, *Uromi Chronicles 1025-2002 History Culture Customary Law* (Nigeria: Aregbeyeguale Pub., 2002), 163.
[22] Otoide, 4.
[23] NAI: CSO 1/2/15: Southern Nigeria Dispatches to the Colonial Office 1901.
[24] O. Adewoye, *The Judicial System in Southern Nigeria, 1854-1954* (London: Longman Group Limited, 1977), Chapters 2 & 3.
[25] Osagie, 57-58.
[26]Osagie, 60.
[27] Quoted in Adewoye, 31.
[28]Adewoye, 1-5.
[29] Adewoye, 1
[30]Butcher, 238.
[31] Butcher, 266.
[32] Butcher, 251.
[33] NAI BP 258/18: 'Ishan Native Administration/ Inauguration of'
[34] NAI Ben Prof. 99/1930: *Marriage Customs Registration of Native Marriages*
[35] NAI Ben Prof. 260/1921: *Ishan & Ora Civil Code Re Native Law & Custom Concerning Marriage & Inheritance, etc*

[36] NAI Ben Prof. 260/1921:
[37] Ehiabhi
[38] NAI Ben Prof. 260/1921:
[39] NAI Ishan Division (ID): 215/IIA
[40] R. Firth, *Human Types* (Great Britain: Sphere Books Ltd, 1975), 117.
[41] Interview with Pa Akhabue, 85,community leader, Ukoni-Uromi, 13 April, 2008.
[42]NAI Ben Prof. 68/1927: *Marriage Girls under 16 Years- Proposed Native Court Rule* .
[43]NAI BP 69/1927: correspondence form the Southern Provinces Secretariat, Lagos to the Resident, Benin Province, dated 28th April, 1927.
[44] Pa Akhabue.
[45]NAI BP 1751: Native Children (Custom and Reformation Ordinance), confidential memo from the Secretary, Southern Provinces on the "Child Prostitution" dated 8th February, 1944.
[46]NAI ID 215/ Vol V.
[47]NAI ID 21V/V: Uromi Native Court Matters Affecting, correspondences from Augustine Ibadode to the DO dated 11th September, 1939, and that of Emmanuel Ifon dated 17th August, 1939.
[48]Quoted in J. O. O. Unumen, "The Impact of Colonialism on Ishan Women with Emphasis on Marriage, Education and work," M.A. Thesis, Department of History, University of Ibadan, December 1988, 130.
[49]NAI Ben Prof. 461/1915: *Native Marriage Proposal Affecting.*
[50] NAI BP 126A, File I: Marriage Custom, Registration of Native Marriage, reply of the Resident, Benin Province to the issue raised by the Colonial Secretary dated 31st October, 1922.A similar situation existed in Etsakoland, see E.O. Erhagbe. "The Nigerian Traditional Judiciary and the Colonial Stress:The Case of the Etsako Clans,1919-1960", *Nsukka Journal of theHumanities,,15(2005),1-29.*
[51] Okojie, 98. and Erhagbe.
[52]Quoted in J. O. O. Unumen, "The Impact of Colonialism on the Status of African Women: The Ishan Example", *The Constitution A Journal of Constitutional Development*, 5 (2005), 95-96.
[53] NAI ID 215/ Vol V.
[54]NAI Ben Prof. 199/22: *Memo from D.O.*
[55] NAI BP: 661/1914, Half Yearly Report on Ishan Division, June 1944.
[56]Unumen, "The Impact of Colonialism on Ishan Women…, 121.
[57]Okojie, 165.
[58] NAI Ben Prof. 99/1930: *Marriage Customs Registration of Native Marriages.*
[59] NAI Ben Prof. 99/1930:
[60] NAI ID 215/Vol II: Uromi Native Court correspondence.
[61] NAI ID 21V/V: Uromi Native Court Matters Affecting.
[62] NAI ID 21V/V: Uromi Native Court Matters Affecting.
[63]NAI Ben Prof. 260/1921:
[64]Okojie, 179.
[65] Ehiabhi.
[66]Ehiabhi.
[67] NAI Ben Prof. 260/1921: *Memo from the DO.*
[68] NAI BP 1264/II: Marriage Custom: Registration of Native Marriage, Marriages Registration Rules, correspondence from DO Kukuruku Division to Resident, Benin Province, dated 9th September, 1938.
[69] NAI BP 1264/II: Marriage Custom: .
[70] NAI BP 1264/II: Marriage Custom:
[71]Unumen, "The Impact of Colonialism on Ishan Women…, 126.