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Experiences With Digitization of Customary Court Cases in South Western Nigeria

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FCIL Newsletter

FOREIGN, COMPARATIVE, AND INTERNATIONAL LAW SPECIAL INTEREST SECTION

Experiences With Digitization of Customary Court Cases in South Western Nigeria

Yemisi Dina

INTRODUCTION

This article describes my experiences on the digitization project of customary court cases in South Western Nigeria. I made a presentation to the African Section of the FCIL-SIS at the 106th Annual Meeting of the AALL on July 15, 2013.

Customary law is based on the tradition, customs and values of the people, and it varies in different ways. The terminology “customary law”, according to Park¹, is just a blanket description, as there are so many ethnic

groups. Customary law covers various legal systems depicting each tribe’s customs and values. These are the two forms of customary law that are in existence in Nigeria:

1. Ethnic or Non-Muslim customary law, and
2. Muslim customary law.

Ethnic or non-Muslim customary law derives from the customs and values of a particular ethnic group which makes it indigenous. Nigeria has three dominant ethnic groups – Hausa, Igbo, and Yorubas. And among these three groups there are multiple groups as

well; for example among the Hausas there are the Tivs and Fulanis, among the Igbos there are the different groups from Awka, Enugu, etc., while the Yorubas have Egbas, Ekiti, Ijebu, etc. This means that there are different groups of people in the geographical layout of Nigeria and each one has its own customs, values and traditions (See Figure 1). For traditional marriages each group has its own customs, traditions, and expectations. Many of these customs and values are unwritten and passed from generation to

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UPCOMING MEETINGS:

AALS Annual Meeting,
“Looking Forward: Legal Education in the 21st Century,” January 2-5, 2014 in New York, NY.

ILA-ASIL Joint-Annual Meeting, “The Effectiveness of International Law,” April 7-12, 2014 in Washington, DC.

AALL Annual Meeting,
“Beyond Boundaries,” July 12-15, 2014 in San Antonio, TX.

Australian Law Librarians’ Association, Annual Conference, September 10-12, 2014 in Adelaide, Australia.

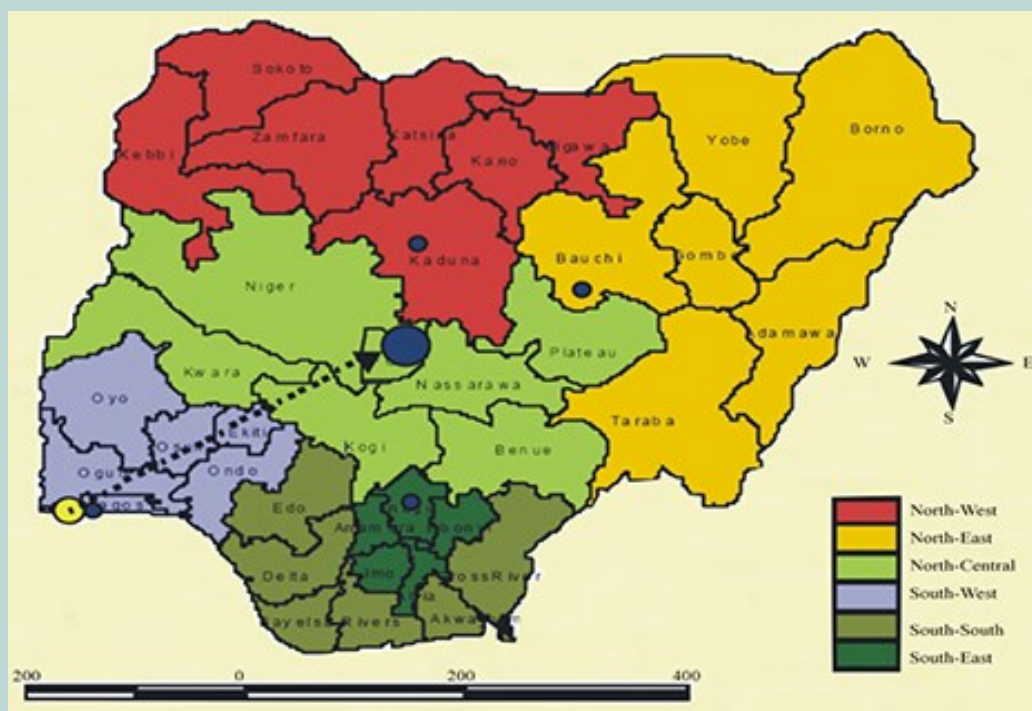


Figure 1: Map of Nigeria (South Western Nigeria is highlighted in blue)

Experiences With Digitization, cont. from page 1

generation; but it is interesting to note that they are applied by the courts. When disputes arise especially in matters related to inheritance, property, land, and divorce, the people will go before the customary courts, and in some instances the customs are used to interpret certain issues at the higher courts. The importance of customary law and tradition has been highlighted in several landmark decisions. For example, in *Eshughayi Eleko v Government of Nigeria*² which went before the then Privy Council of the United Kingdom, judicial recognition was given to the customary practices of the Yorubas in the court's interpretation of traditional values with respect to a native ruler who was removed from office. The tradition of the Yorubas was recognized even though the issue before the court was more of constitutional importance. And recently, in *Edward Omorodion Uwaijo v Stanley Uyinmwun Uwaijo*³, which was heard before the Supreme Court of Nigeria, the court upheld its stand on the Bini⁴ customary law of progeniture – “Igiogbe”. It should be noted that these two cases did not originate from the customary courts which are the lowest in the hierarchy of courts in the Nigerian court system; instead it shows the relevance of customs and traditions. See also *Oke Lanipekun Laoye v Amao Oyetunde*⁵ (this case originated from the Native Court).

Muslim customary law is part of a religion which was introduced to the country. Shariah law is practiced in the northern part of Nigeria which is predominantly Muslim.

SCOPE OF THE PROJECT

The scope of the digitization project is on the ethnic or non-Muslim customary law in South Western Nigeria. Customary law is used as a point of fact in family, land, and commercial transaction cases, especially in colonial and

post-colonial times. In post-independence times, customary courts have been officially set up in different regions and states across the country.

Under the Nigerian legal system, customary courts are the lowest in the hierarchy of courts; despite this shortcoming most of the dealings at this level of court are oral and many important decisions have been lost due to a lack of documentation. Over the years numerous cases of interests have gone through many of these courts which portray the customs, tradition, and values of the different ethnic groups in Nigeria. Technological advancement through digitization will help with the documentation of this important and factual information.

PURPOSE OF THE PROJECT

The purpose of this project is to document customary court judgments in South Western Nigeria focusing on the following subject areas – property and inheritance rights, women's rights in marriage especially in forced polygamous marriages, and children's rights. The project will show the ways in

which culture, tradition, and values are applied by this level of court. In a society where there is an abundance of information on traditional values, it is disheartening to know that a lot of information is still available only in print. Digitizing customary court judgments will hopefully create a permanent digital record for legal information in Nigeria.

The main objective of the project is to make these decisions perpetually available in digital format. In February 2013, I visited and participated at the seatings in two customary courts in Abeokuta, Ogun State in South Western Nigeria, where I recorded and reported the activities. These recordings will be transcribed, summarized, and made available online.

CUSTOMARY COURT SYSTEM

As shown in Figure 2, customary courts are the lowest courts in the hierarchy of courts in the Nigerian legal system. These courts adjudicate only civil actions. They are the most

Continued on page 4

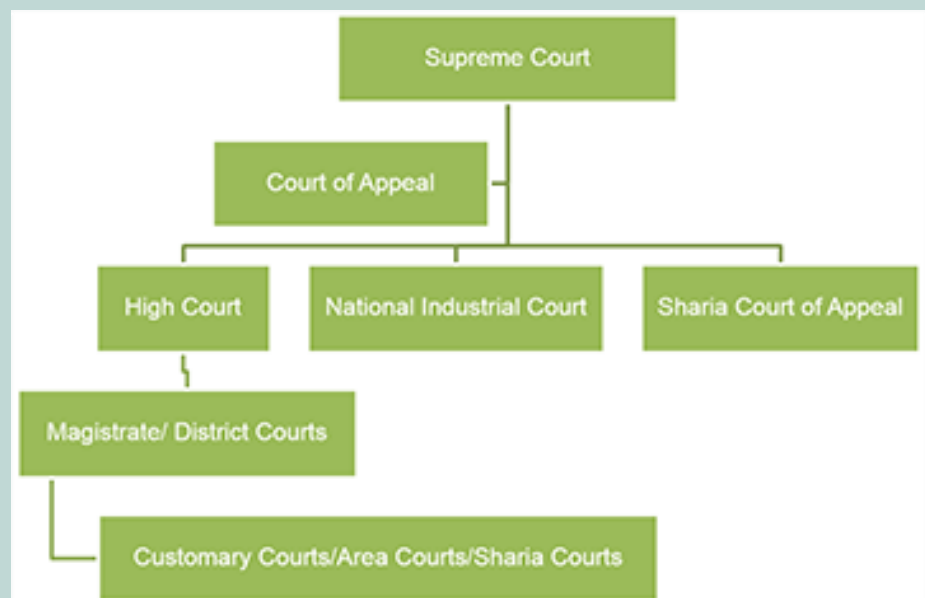


Figure 2: The Nigerian Court System

Experiences With Digitization, cont. from page 3

accessible to the common man in terms of costs and logistics. Usually the courts are located in residential neighbourhoods which means that people don't have to travel long distances. Notwithstanding, this does not imply that they are not formal or well-structured; they actually have their own rules and officers who administer and control the activities at various sittings. Parties do not require legal representation; they can represent themselves and are able to relate their stories themselves - usually in the local dialect. The customary court system empowers and facilitates quick and fast access to justice. The courts are adjudicated by laypersons and the head of the court, who is called President and who sits and hears proceedings with three other lay persons. Appeals from this court go to the High Court and then to the Customary Court of Appeal.

CUSTOMARY COURTS – OPERATION

The operations of the customary courts are managed by the Judiciary in each state, as seen in the Ogun and Oyo states that I visited. As noted earlier, the courts are adjudicated by lay persons who are appointed by the Attorney General and Chief Judge of each state. In Ogun state, the government ensures that these lay persons are educated, highly knowledgeable in local customs and traditions, and very well-respected in their community.

The Registrar of Courts is responsible for monitoring and ensuring that court sittings take place. This office also organizes seminars and refresher sessions for members of these courts. Like other courts, customary courts have court clerks and other administrative staff who manage the day-to-day activities, including a bailiff who goes out to enforce court orders.

While I was on the field trip, the Oyo state government was restructuring the customary courts and was in the process of receiving applications from interested parties; appointments were made in July



Figure 3: Organizational Chart of Ogun State Courts with names of presiding officers

2013.

CHALLENGES

Political climate/Reorganization and restructuring exercises in most states

Nigeria is a young democratic state with many teething problems; moreover many of the leaders are just introducing changes to the governance structure. This includes the judiciary, where a lot of reorganization is ongoing. For example, in Oyo state which is the second state I will be working on, the customary court activities have been suspended for a few months because the state government is reorganizing and reviewing the structure as well as making new appointments.

Funding

A project of this kind requires a lot of funding to assist with travelling from one city to the other. Research assistance will be needed to assist with interpreting some of the local dialects which may be new to the researcher (in some instances), so we will need to hire a couple of staff for the project. A computer programming software will be

needed for the indexing and metadata of the final project when it is to be posted on the Internet in order to make it searchable.

Bureaucracy

Since the courts are subject to the control of government officials who in turn report to politicians there are a number of bureaucratic bottlenecks that will need to be handled such as permission for access and signing of copyright for online postings. But so far there has been great support from both the courts and the government officials.

BENEFITS OF THE PROJECT

This project seeks to enrich and contribute to the access and availability of customary legal literature which is predominantly oral and unrecorded, yet highly relevant to legal research.

As an information professional with expertise in Nigerian legal research, I often get reference enquiries for cases and legal issues related to customary law, but I'm unable to answer these questions as there

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are little or no resources available. Having digitized, electronic access to customary law decisions will enrich legal literature. The digitized cases will be of great use to legal historians, legal researchers, feminist scholars, and interdisciplinary scholars.

Having these judgments openly accessible will also give a broader understanding of the cultural values and traditions of this jurisdiction. Many of the cases that start from the lower court do not get to the higher courts and since they are unreported, nothing is heard about them.

FINDINGS AND CONCLUSION

While I was looking for funding, I learned a lot about granting agencies and their operations, something I would not ordinarily do. Researching about them also gave me an insight about the usefulness of my project, because as a librarian and information professional I tend to take for granted the amount of information I know and can find by myself which others cannot.

In Ogun State, I observed that there were no land disputes brought before the court, unlike in past years. The situation in Oyo State will be reported when the digests are available online.

I am hopeful that some of the administrators in Nigeria will show interest and provide funding and continuity for the project. Down the road, I hope to extend the digitization of cases to other levels of court in this jurisdiction, as law reports are mostly in print.

FURTHER READINGS

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² 1932 A.C. 622

³ Suit No. SC. 135/2004 (More can be found about this case in [The Guardian newspapers](#))

⁴ The Bini people are from the South-South part of Nigeria, predominantly from Benin. See Figure 1, Benin is the capital of Edo State.

⁵ 1944 A.C. 170

Chair, cont. from 2

MANY THANKS

I've had membership in various SISs over the years. All of them have active and enthusiastic members, and our FCIL-SIS is second to none. So, thank you to the FCIL-SIS members. You are unfailingly supportive of our SIS!

I personally would like to thank our current Past Chair, Heidi Kuehl, for her organized, prompt, and steady leadership. I am grateful for Heidi's continuing advice and counsel during my own term as Chair. And, *dékuji* and *na shledanou* to our outgoing Secretary-Treasurer (and my fellow Czech-American) Lucie Olejnikova, whose energy imbues everything she does. To our *incoming* Secretary/Treasurer (and my program's Chinese law expert) Roy Sturgeon, I add *xie xie* for his dedication, enthusiasm, and artfulness (i.e., with the chairs we used at the Business Meeting).

Thank you to Vice Chair/Chair Elect Teresa Miguel for the Education Committee Report at the Seattle Business Meeting, and also for her publicity efforts on behalf of FCIL-SIS programs and the FCIL Schaffer Grant for Foreign Law Librarians. Our Education Committee relies on the incredible institutional knowledge of Teresa's Co-Chair Dennis Sears, whom I thank for his advice and support during my own term as Education Committee Co-Chair. Finally, a very special thanks to our immediate Past Chair Sergio Stone for his ready advice and counsel during the busy 2012-2013 year.

Schaffer Grant Stories

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Please send your notes to either [Lucie Olejnikova](#) or [Teresa Miguel-Sterns](#) for the next issue.