

# A Comparative Analysis of Provisos for Non-Human Agents in Property Laws of Pristine West African Legal Culture

**IDAHOSA OSAGIE OJO PhD**

Department of International Studies and Diplomacy, Faculty of Art and Education,  
Benson Idahosa University, Benin City, Nigeria.

## **Abstract**

*There are provisos for non-human agents in property laws of pristine West African legal culture that survived coloniality. This paper analysed these non-human agents and how they were used to protect communal and individual property. The research is imperative as the evidence for historical reconstruction of these legal provisos becomes more distant each passing year due to coloniality. It adopted the historical method with the interpretive and comparative designs. Primary and secondary sources were also utilised. The primary sources include examinations of the relics of these non-human agents, oral interviews, ethnographical and cultural studies while the secondary sources include the relevant published books and journal articles. The finding reveals that everything among the legal culture under investigation had life and could be possessed by spirit beings or tabooed. This spiritual belief was utilised in regulating and checking abuse of public resources. Findings also show that the rules of these taboos were enforced by physical courts in protecting the environment and the resources therein. Findings also show that the non-human agents certified and documented private property and the economic status of wealthy individuals. In addition, it reveals how the rights of usage of the property owners were recognised and protected by laws.*

**Keywords:** Provisos, Non-Human Agents, Property Laws, West African, Legal Culture.

## **Introduction**

This paper analyses the provisos for non-human agents in property laws of pristine West African societies in a comparative style. Like their ancestors, some West African peoples are still polytheistic with several numbers of deities despite coloniality. The African states that collapsed to the imperial interests of the Europeans in the nineteenth century had these religious beliefs ingrained in their laws. There was also the credence that the community is a living entity, made up of the departed, the living, and those yet unborn. The ancestors were believed, particularly in law and its application to be principally concerned with peace and order in the society and “watched from the world beyond.” Thus, non-human agents were visibly active in this legal culture and their relics abound everywhere in the region in spite of the effect of modernity. Throughout the region, religion played an elaborate role in justice management because of the fear of the ancestors and other spiritual forces, which made people law abiding. The agents of the unseen forces were believed to have participated in law enforcement and reported to the almighty God, who was believed to be the chief judge. Thus, human agents of laws were largely impartial in their duty because as they believed they were under the endless watch of these unseen forces. When disputes occurred or a crime is committed and the balance of the society was shaken by the deviant act of a person, those who were questioned by the elders have to be sincere for their own good as the courts were believed to have as representatives, unseen beings among who were his forefathers and his personal deities, all of which were capable of exacting retributive justice. The belief in the mystical was a strong deterrent for crimes and uncouth behaviour. Thus, religion has a place in law enforcement like other pre-colonial African communities.

## **Provisos for Non-human Agents in Communal Property Laws**

Some non-human agents in the religious culture of West African communities are noticeable in the communal property laws of these communities. For instance, there are well known legal provisos that regulate human use and relationship with special stones, trees, species of animals and water bodies. These laws also have enforcement procedures and they are mostly used with resources that are communally shared. These communal resources so regulated are believed to have life and

could be possessed by higher spiritual forces, who also watch over them and the human that lived with them. These non-human agents were so real to the people that they experience the feelings of one another particularly pain and anger. Mishandling or breaking of the legal provision that regulates their usage will hurt both the humans and these non-human agents and aggrieve the spirit beings that dwells in them. Unlike the scientific classification of living and non-living things, there is no non-living thing in the polytheistic culture in Pre-European West Africa communities as everything were thought to have life – physical or spiritual as beings and could be possessed by other formless spiritual entities that are interrelated and connected with humans. It was also believed that humans can incarnate in form of any of these objects. Thus, the law covers both humans and the unseen world. Whereas, the unseen world is represented by the diverse features of the environment, which also form the major communal property or resources. The aim of law is wellbeing, which implies healthier relationships among the people and better use of these communal resources. Wholeness, which is the aim of law, therefore, implies the relations between man, Anthropos, and the physical environment. Thus, the aim of law is focused on the unseen world, represented by the communal resources and the relationship between these resources and the Anthropos. Malcom Ferdinand describes the break in this humanity–nature symmetry as the “the environmental fracture.” These multifaceted relationships between the Environment (En), Non-Human Agents (NHA), Anthropos (An), Aim of Law (AoL) and Communal Resources (CR) is represented in the equation below:

$$En = NHA + An. \text{ Whereas, } NHA = CR$$

and

$$AoL = An + CR$$

$$\text{since, } CR = NHA = \text{Unseen World}$$

Therefore,

$$Aol = An + \text{unseen world}$$

The connexion between the Anthropos and these non-human agents are so strong and complex that wellbeing of the Anthropos implies caring for the physical environment. Without such care, the interdependency between Anthropos and the “physical nature would be undermined.” Thus, the ancestors, the future generations, the deities, important plants and animals and other features of flora and fauna were venerated. This is truer for all public properties as the people believed to be sharing them with the non-human beings in the communities. Among all the people of the region, the ancestors and other deities are often invited to the family meals. According to Parrinder, the ancestors “are felt to be present, watching over the household, directly concerned in all the affairs of the family, giving abundant harvest and fertility.” This cultural belief was codified in many of the legal systems in pre-European West African communities. Among the Benin people, for instance, communal properties that needs to be protected or safe for future generations were tagged with different concepts such as *awua* (forbidden), *emwin ebo* (cursed items), and several other taboos or spiritual classifications that automatically placed them under the protection of the law. For instance, the sacralization of land as communal property aided land preservation and promotes economic activities and production. Legal cases involving tabooed communal property are taking very seriously with severe penalty as they are believed to be protected by the supernatural agents in the community. Thus, stealing of communal properties, destruction of crops, shifting of land boundaries, defecating in the stream and similar communal property law violations, which are tabooed attracts severe punishments. If anyone tampered with anything so classified, he and his close relatives were forced to make spiritual atonement in addition to payment of fines. Cases that have to do with communal property theft or wrong usage of communal property were settled by high-ranking courts. In the Benin judicial system, for instance, such cases were not for the Odafen or Okaegbe courts as they went to the Enogie Courts and were sometimes appealed even to the Courts of the Oba through the Onotueyevbo courts.

Other communal properties that were also protected with non-human beings, whose wishes were codified into communal property laws include items used for appropriation, things reserved for the eldest age grade, animals and plants preserved for the future generation as well as stolen items or unexplained material things. Non-human agents harnessed into communal property laws in this way were common in virtually all pre-European West African communities. For instance, among the Urhobo people, several animals and plants that were conserved with the use of religious taboos or by

associating them with the non-human beings in the communities have been identified. Some of these include the crocodile, the tortoise, the snail, iguana lizard, bush dogs, several species of fish and birds among others that are preserved. Anyanwu, Abedi and Edafiadhe report that many of these species grow to great sizes and because they are not hunted for food, are therefore numerous in the community where they are kept by taboos - "they are allowed to go about 'majestically', unmolested and can go into the traditional homes of the people uninhibited... they are allowed and even encouraged to pick whatever food items they want both at home and in the farm." Also, "stealing of community property, destroying and farming in the grove and sacred bushes, eating of totem animals such as tortoise, parrots, eagles, sacred fish, and so on were forbidden" Throughout West Africa in the pre-European periods, "taboos serve as a grand norm, a reference point in determining traditional law-breakers, and in the traditional adjudication of ensuing cases" The more feared the non-human agent concerned with the object or property on taboo, the more solemn the judicial process and the more severe the penalty, which can be expulsion or capital punishment. Taboos for special species regulated its utilisation and are usually inclusive prohibitions, banning exploitation and in some cases usage of these species. Taboos form an integral part and parcel of the communal property laws and have always had ways of allowing all things exist fairly in the ecosystem. For the ancient man, environmental taboos have a pivotal "moral role towards the ontological wellbeing of both the individual person and the environment at large." The people, land, water bodies, plant and animals and other features of the environment were considered and managed for the wellbeing of the individuals and nothing was neglected even as far as non-sensible beings, which were regarded as members of the community in thoughts and actions. Some of the flora and fauna that were tabooed have been preserved till the modern day. Legal "prohibitions against killing, touching, eating and selling tabooed biodiversity products were put in place to preserve bio-species serving as hosts of guardian spirits of individual or communities." It was also claimed that when guardian spirits lacked host media they wander about and become aggressive against those they were supposed to guard.

The deities and other non-human agents were so feared were feared by the people and as a result, the ruling class used them to protect communal properties. The use of *Oguedion* to maintain economic laws was conspicuous during the reign of Ogiso Obioye in Benin Kingdom. In his work on Ogiso Obioye, Eghosa Osagie explains how *Oguedion* was used to mop up excess liquidity from circulation during a period of great inflation in the kingdom. To curb this inflation, the State Council introduced what he referred to as "Ogiso Obioye Anti-Inflation Policy." The policy was a decree, which stated that:

*If any person bought anything whether in the markets, streets, farms, or private areas, as long as payment of money was involved, that amount must be collected twice by the seller" (3-4). The second payment so collected must be paid into the king's treasury in the palace or at the Oguedion. If any person embezzled the king's share of the money, he would have to pay it back twice.*

There was conformity by the buyers the moment the vendor cited *Arigho's* money and the watchful spiritual eyes of the *Oguedion*. The anti-inflation policy worked marvellously as no one would dare flout the directive of the king which is being supervised by the *Oguedion* shrine. More so, everyone was compelled by oath, since these monies were kept in the *Oguedion*, ancestral alter of the town to which every citizen owed reverence and complete obedience. In each of the town or districts, all the money which were in forms of cowries collected by the market traders were deposited in the ancestor's shrine, known as *Oguedion*. No one dare touched the sachets of cash, which was left unguarded by humans until the *Avbiogbe*, the state's massagers came and collected them and then banked the money in treasury known as *Azigho*. Also, tagging a property sacred was also a way of preventing it from theft. The punishment will be more severe if the stolen property is spiritually symbolic such as yams, hen, kola, seedlings or if certain persons were the culprits such as titled men, elders and other seniors. Stealing from an outsider is even more sacred and serious because it could subject the entire community and other non-human agents of the outsiders or his community for punishment or atonement. To prevent this, the thief is detained until a substantial ransom is paid by his relatives apart from which in the former times, the culprit would be sold into slavery.

### **Provisos for Non-human Agents in Private Property Laws**

The non-human agents were not only concerned with communal resources but also regulated private property. For instance, the belief that the gods punish not only the offenders in the case of theft but also everyone closely associated with him is provided for in the laws of most of the legal cultures under study as collective responsibility in legal personality. Collective responsibility in legal personality is practice in African legal system, where those closely connected with the offenders are called to question together with him. This recognition and demand for group's obligation by the law ensured that families and friends acted as watchdogs for the individual members of the society. Adewoye explained that the situation is similar in several other pristine African communities and that it serves as a strong crime dissuasion particularly in the case of theft.

The recognition of group obligation in legal matters ensured that families and friends act as watchdogs for the individual members of the society and that "it is still a cardinal attitude of Yoruba law codes that a liability by no means dies. When the debtor dies, his family feel themselves under obligation to settle the debt." This cultural belief that the non-human agents do not met punishment on the individuals alone but also on his lineage and close associates is also applicable in high profile cases and the punishment also spread to close relatives except if the accused or any other member of his family paid adequate compensation or made the necessary sacrifices. Failure to complete the necessary spiritual cleansing for the crime of a close relative will also attract punishment from the gods. In the middle of the twentieth century, a British colonial officer wrote of the Ikere people of the Yoruba group that most defilements of harmony were not chastised on the individual as much as on his kinfolk, associates and property. This is in contradistinction to the imposed European colonial system, where individuals are only held responsible for their own transgressions and not answerable for the delinquencies of their close relatives whether blood brothers or friends.

Venerated non-human agents were also used to restore peace and assuage temper in cases of dispute over property or related issues. For instance, the provisos for deified non-human agents that protected against jungle justice in suspected cases of theft and allowed the suspect fair hearing and some measure of mercy if found guilty is effective in maintaining some measure of peace. For instance, these provisos are deductible from the various protective non-human lifelines available to a supposed victim of jungle justice particularly when caught red handed. Some of these lifelines in Benin Kingdom include *Ile gbina ahuosa*, *Ile gbinedion*, *Ile gbinogun*, *igbinerha* just to name a few. These phrases are translated as "I have fled to the court of *Ahuosa* for justice and mercy," "I have fled to the court of the ancestors for justice and mercy, I have fled to the court of Ogun for justice and mercy etcetera. Elias explains that the supposed offender may escape summary justice by beating a hasty retreat using any of these options and running into any nearby sanctuary, such as a sacred shrine or king's palace, or any other non-human potente with a superior authority "pending the hearing of the case against him" by the new protective power that he submitted to for justice and mercy. It was obligatory of the chief or authority that was being used as a lifeline in this manner to take charge of the situation, bring the accused to proper judicial hearing and as long as possible, speak in his defence. This provision of lifeline that can be used to avoid immediate punishment for a supposed offence until a proper judicial hearing was conducted was institutionalised by law and practiced in most pre-colonial African societies. The cultural narrative that saw Ekemefuna running to take protection at the foot of Okonkwo as recorded in Achebe's *Things Fall Apart* is a good example among the Igbo people. His assailants, who were bent on sacrificing him, had to halt and wait for *Okonkwo* to act.

Another non-human agent that was used in private property regulation is known as Ikegobo, the alter to the right hand. Meek observes that the "Ikenga is the embodiment of a man's strength of arm" while Chukwuezi defines Ikenga as "the cult of the right hand which identifies with a man's diverse field of endeavour." Similarly, Talbot defined Ikenga as "a symbol of success in trade, war, hunting and farming. Ikegobo, therefore epitomised the right hand through which a successful man, "hazards his way through the thick and tin of life." According to Ihediwa Nkem Chimee, it is an aggressive masculine cult of the right hand which defines the realms of endeavour and achievements of the individual owner with a cosmic force that directs one's destiny on earth." Ikegobo is a living and mobile alter that document personal deeds, valour and achievements of the holder. *Ikegobo* is an altar that is dedicated to the adoration and commemoration of the hand, which was regarded as a symbol of personal efforts and accomplishments. Sweet Ufumwen Ebeigbe observes that the "practice

stems from the belief in the hand as the symbol of a person’s ability to attain great achievements in life. Consequently, only eminent personalities establish *ikegobo* for their personal devotion.” Surprisingly, it is known by the same name with slight variations throughout West Africa particularly among the Benin, Igbo, Ashanti, Ishan, Urhobo, Isoko, Igala and the Western Ijaw peoples as shown in the table below.

A table showing the altar to the hand among Nigeria peoples

Benin People	Ikegobo	Altar to the right hand
Mbaise (Igbo)	Ikenga	Altar to the right hand
Igbo (Anambra)	Ikenga	Altar to communal Achievement
Igala	Okenga	Altar to the right hand
Isoko	Ivwruejiri	Altar to the right hand
Idoma	Okenga	Altar to the hand
Urhobo	Ivwruejiri	Altar to the right hand

Source: Composed by the author

Bradbury observes that the belief in the hand as the determinant of a person’s position in the society:

*“...is found, in various forms, over a wide area of the central part of southern Nigeria on both sides of the Niger. It is known by the same name, with slight variations, among at least the Benin, Ishan and Urhobo-Isoko sections of the Edo speaking peoples, over a large part of Ibo country, among the Igala and among the Western Ijaw. Everywhere it is associated with the hand or arm (the right arm is frequently specified), and with the prowess, strength and enterprise of the individual worshipper”*

Ikegobo was used to document rights to property as it connects a person’s right hand with the property, that he acquired by himself excluding those he inherited or got by sheer luck. Handiwork or industriousness was symbolised by the hand, which was thought to be the ultimate bringer of material wealth. Reverence and adoration for the hands was so solemn that the right hand became a symbol of worship, to whom prayers for material prosperity was addressed. In 1961, R. E. Bradbury undertook a detailed study of the *ikegobo* of Ezomo, the chief commander of the Benin army, which was made around the 17th century and opines that the bronze shrine of the right hand is one of the ‘most ambitious, if not technically the most accomplished, castings’ known in Benin.

Ezomo’s Ikegobo



Source: “Ezomo's Ikegobo and the Benin Cult of the Hand”

Wealthy men have a carved Ikega stool with the right hand carved at one corner, on which they put their hands during Ihieku ceremony “*O khon mu obo yan Ikega*” translated as he has war so successful that he puts his hand on the stool of *ikega*. *Iwina obo* translated as the work of one’s hand was honoured above all other possessions and achievements. Thus, *ikegobo* was decorated with the most outstanding *iwinobo* and “emblems of occupation, social position, achievements, prestige and successes are portrayed on them to show that the owner is a great achiever.” Ikegobo, therefore, serves as the legal documentation, of the holder’s right to property portrait in it.

In addition to serving as the legal documentation of the holder’s right to property that he has

acquired, Ikegobo serves as certification for class status attained by the owner. It is a legal recognition of the economic status of the holder and it is not owned by the less economically privileged as it was designed so elaborately expensive that it was only members of the upper economic class that could afford it. Very rare tree trunks such as those of the Akanta tree were used in constructing *Ikenga* among the Igbo. Ihediwa Nkem Chimee explains that this tree trunk was “not a very common tree for everybody to lay hands on and as such, having ones *Ikenga* done on it epitomized its possessor as a man of great” valour, fortune and economic class. It is thus clear that the people interpreted the works of one’s hand as the criteria that qualified him as a member of the distinguished class of persons of high calibre in his society. In some parts of Igboland, especially in Mbaise, custodians of *Ikenga* must either be great titled men such as *Ala, dibia, Eze, Onye, Onye Ozo, Okonko, or Nze*. Similarly, hunters, farmers, traders and warriors who have made remarkable achievements in their communities also keep the Ikegobo in several West African societies to attest to the prized economic class attained. The ownership of *Ikegobo* portrays high status, accomplishment, wealth and integrity. It is mostly owned by warriors and great men as a memory of their achievements.

### Conclusion

The non-human agents in the religious culture of West African communities are noticeable in the communal and private property laws of these communities. The communal resources were believed to have life and could be possessed by higher spiritual forces, who also watch over them and the human that live with them. The connexion between the human world and its physical environment are so strong and complex that to care for the humans implies caring for the physical environment. Features of the physical environment were believed by the people to have spiritual connection that can be positively or negatively harnessed for impact. Thus, the laws and the courts safeguarded both the humans and the non-humans. In property laws for instance, the perceived instructions of the non-human agents are binding and enforceable by human courts. Thus, legal provisos that regulate human use and relationship with special stones, trees, species of animals and water bodies whether they are tabooed or not are enforceable by the courts. Again, the belief that the gods punish not only the offenders in the case of theft but also everyone closely associated with him was provided for in the laws of most of the peoples under study as collective responsibility. Similarly, the *Ikenga* documented property ownership and certified the class status attained by the holder.

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