Re-Imagining, Adapting and Appropriating Indigenous Customary Laws for the Nigerian Legal Justice System and Emerging Economy

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Abstract

The paper identifies the cultural and underlying principles and philosophy of the customary law of selected Nigerian ethnic groups. It proceeds to assert that since customary rules and laws have, and continue to interact with common and civil law traditions, it is imperative to understand the relationship as well as impact of these systems on indigenous legal systems. It is, therefore, against the foregoing background that this paper seeks to interrogate these indigenous traditions, values and systems, in the light of present-day challenges. The paper further seeks to advance the case that there is need to look beyond the traditional repugnancy doctrine or view of customary laws, for the purpose of understanding their autochthonous nature and functionality, as well as assessing their potentials for growth and development and continuing relevance for contemporary demands.

Introduction

The cultural values and beliefs systems of any people affect the indigenous legal and justice systems of any society or community. Culture and cultural values have the ability to change and evolve to meet new challenges. Culture, in this sense references the ideas and material artifacts, systems and ability of the people groups to innovate, evolve, absorb and imitate patterned and symbolic ideas that ultimately ensure the survival of the people and society. The underlying thinking, philosophy and belief systems of the peoples invariably inform the attitudes and ability of the people groups to initiate, innovate, and adapt its processes and systems, to meet the need for law and order and the wellbeing of the society.

This ability to create, innovate and evolve is inherent in any, and every people groups. It is therefore not correct to suggest that it is imported as has been the view or position held by some schools of thought and groups. The renowned anthropologist and archaeologist, late Professor Bassey Andah 1, submitted that the critical appraisal of the available archaeological and other relevant data does not support the belief that outside cultural influence was mainly responsible for the origins, development and overall character of the Neolithic and iron age societies of West Africa. It is also his view that it is particularly wrong to claim that ideas and peoples from outside, usually from the north across the Sahara, stimulated or generated most major developments pertaining to early food production or the earliest working of iron and copper in West Africa. Rather, complex regional, sub-regional and local factors are important in the development of ideas and systems of the peoples, including, we would add legal and justice systems of societies.

This concept paper therefore highlights the fact that, any critical assessment of the cultural and philosophical bases of indigenous customary legal and justice system in Nigeria, will establish its autochthonous foundations, with immense potential for self-regulation, improvement and growth. The paper identifies the need for a thorough and constructive investigation and interaction with the indigenous customary legal traditions and justice systems for a proper appreciation of its potential and functionality for contemporary societies. The paper will examine the cultural, philosophical and religious foundations of some indigenous customary law traditions and systems in Southern Nigeria, as it is imperative to appreciate how the legal traditions and justice systems are influenced and framed by family and kinship relationships, belief systems and social activities such as agriculture, technology, history, and the general environment. Since customary rules and laws have, and continue to interact with common and civil law traditions, it is also important to understand the

relationship and impact of this interaction and how this relationship may be optimized, for the overall effective functioning of the legal and justice system.

Customary law 2 has been defined in many judicial decisions. The Supreme Court of Nigeria defined customary law as theorganic or living law of the indigenous people of Nigeria, regulating their lives and transactions. There is indeed, a need to interrogate the indigenous traditions, values and systems, in the light of the present day challenges. The paper seeks to advance the case that there is a need to look beyond the traditional repugnancy doctrine 3 or view of customary laws, to identify the potential for growth and development. The sense of equity, fairness or justice is universal, and a foundational requirement for orderly regulation of human relationships and society 4.

Indigenous Cultures and the evolution of Customary Practices, Rules and Laws:

Cultural anthropologist conceive and define culture as the patterns of learned and shared behavior and beliefs of a particular social, ethnic, or age group. It can also be described as the complex whole of collective human beliefs with a structured stage of civilization that can be specific to a nation or time period. People need to adapt and transform to physical, biological and cultural forces, to survive them. Culture generally changes for one of two reasons: selective transmission or to meet changing needs. This means that when a village or culture is met with new challenges, for example; a loss of a food source, they must change the way they live. This could mean almost anything to the culture, including possible forced redistribution of, or relocation from ancestral domains due to external and/or internal forces 5.

The rules and customary laws and traditions of indigenous communities may not be written in most cases, but were not arbitrarily made by an individual ruler or a handful of autocrats. They became entrenched in the lives of the people after a lengthy process of general participation, including public debates and active discussions in which all adults participated. Every adult in a village belongs to

the village assembly, the ultimate lawmaking authority. In some African societies, laws are made only on the basis of a general consensus amongst participating adults. This lawmaking process not only creates public awareness of the law but also confers a sense of legitimacy on the law. Punishment was not arbitrarily meted out. It was exacted only after a trial and a finding of guilt. Sometimes, decisions involving the customs of societies were enforced by members of an Age-Grade association, a group of people within a society who were born within a particular three-or four-year period. The principle that an individual was responsible for his own actions was a fundamental element of justice in the indigenous societies. Not all cases were submitted to established courts and tribunals. Some disputes were settled through customary arbitration or informal moot courts composed of neighbors or friends. At such gatherings, parties to a dispute negotiated until a settlement was reached. Invariably, the settlement was a compromise between the two claims, and sometimes a ritual such as oath taking was used to bind the parties to the decision. Family disputes were arbitrated by family moots, composed of lineage leaders or family heads. Oracles were consulted in more-complex cases 6.

The fact that customary judicial procedure is essentially conciliatory presented to the European administrators a contrast to the notion of judicial adjudication and positivist legal approach to legal thought 7. It is indeed sufficient to say that the term “customary law” denotes the system of law indigenous to the various African States in contradistinction to the received or imposed European laws8. The key feature of customary law is that it consists of customs, religious beliefs and superstitions. It is also unwritten, but its unwritten nature does not make it unworthy of being called a law. There are instances that indigenous laws have been rejected by the courts because “they were repugnant to natural justice, equity and good conscience”9. Jurists have interrogated customary law with the mind-set of the thinking in the case of EshugbayeEleko v. Government of Nigeria 10, and the Elias' thesis11,which posit that the doctrine of repugnancy

has a positive effect on the development of our customary law by the removal of its superstitious and harsh elements. This line of thinking or assumption can indeed be questioned. In the following section of this paper, we examine the philosophical thinking and cultural belief systems and values underpinning the customary legal and justices systems of three people groups in Southern Nigeria.

The Customary Law and Practices of the Yoruba, Efik and Igbo Ethnic Groups of Nigeria:

With the **Yoruba** ethnic group in Nigeria, the Orunmila ideology of thinking and philosophy, which has several parallel attributes with the Socratic model, was a system of philosophy, and offered an intellectual and spiritual explanation to the social reality of the people.

Michael Titlestad, has this to say about the Yoruba traditional way of thinking:

> "There is no intrinsic need in Yoruba ideology to fixate on the Either/Or mode of European thought that would make it exclusively one or the other…This idea that something can mean different and changing things simultaneously, is the foundation of much contemporary philosophy which addresses the question of meaning. The capacity of the Yoruba to improvise new possibilities in existing themes, as they seem to have always done, is one of the greatest contributions by any culture to intellectual and artistic history"12.

Furthermore, the Yoruba concept of 'omoluwabi'/'omoluabi' feeds into the worldview of the people; which is progressive and respectful of elders and constituted authority and rules of harmonious living, rather than regressive. This worldview and is expected, and governed their interactions with each other. Omoluwabi, as a 'philosophical and cultural concept, is 'used to describe a person of good character. It signifies courage, hard work, humility, respect - especially respect for the rights of others, and integrity13. This thinking and world view can be found in varying degrees amongst other ethnic groups in Nigeria.

The Yoruba operated both a segmentary lineage group and centralized kingdoms with elaborate bureaucratic and legal systems 14. Kinship affinity was strong, and it regulated behavior and allowed individuals to ascertain their status in society and behavioral patterns expected of everyone. The Oba and his chiefs and Ogboni society promulgated the laws. Rules of conduct were recognized and sufficiently clear and obeyed by individuals, who also expected compliance from other members of society. The need to provide social security and justice for large families often accounted for the institutional emphasis on the solidarity of a kinship group. It involved the acceptance of responsibility and obligations to the group to the extent that individuals were seen, primarily, as members of their particular families before they were understood as members of the larger society. The OloriEbi (head of the extended family) presided over the settlement of disputes among his kinsmen. His "court" was an informal one that only dealt with civil cases involving members of his extended family. He settled civil cases and sanctioned the guilty either by imposing a fine (oji) or simply by making them give a verbal apology, especially if the person was a child or "wife of the family".

Disputes involving members of the extended family and others might be transferred to the OloriAdugbo for arbitration, where the extended family fail to settle the matter. An appeal from the OloriEbi's "court" might also be entertained at the OloriAdugbo's court. The Oba recognized the OloriAdugbo's court, which tried all civil matters within his quarter. The OloriAdugbos court could handle preliminary hearings in criminal cases without actually resolving them. Criminal cases were handled at the Oba's court. The idea of classifying cases into either civil or criminal existed among the Yoruba, and a criminal was called "odaran". To be considered odaran, one had to commit a heinous offense that could not easily be settled or dismissed as trivial. Such cases included homicides, treason and felony, burglary, accidental or provoked manslaughter, assault, and rape. Civil cases included willful damage to property, quarrels, insults, debt, and other

offenses. If the Oba and his Igbimo passed judgment, no one dared appeal the judgment. Anyone who did was considered a rebel. The due punishment depended on the nature of the crime. It was the only court that could impose capital punishment. Cases could be heard in public or tried behind closed doors in the Oba's court.

Obviously the deep seated values commonly held by the people held sway and formed the bedrock for compliance to customary rules and laws. Deviant behavior was frowned at, and there was enforcement of rules for good behavior. It is important that these values be understood and investigated, and enhanced for contemporary societal well being

The second people group examined here, is the Efik and Ibibio ethnic groups, located primarily in the Southern part of Cross River and in Akwa Ibom States of Nigeria. In particular, the Efik's occupy numerous settlements in the Calabar and Creek Town area, and in some parts of Akwa Ibom State. The Efik society, through time built specific mechanisms and institutions to prevent conflict, peacefully resolve disputes once they arise, and work through reconciliation processes. Such traditional processes, mechanism and methods range from family heads, the council of elders, chiefs, religious leaders, age grades, kingship mechanisms, compensatory processes and healing ceremonies. All these constitute what has been called "third party intervention" in conflict resolution. In the Efik traditional thought, philosophy and religion, the third party is expected to be neutral and possess the capability to diffuse tension, listen to all sides, restore peace and put social mechanisms in place for peace building. Judgement or decisions were never reached without hearing from both the complainant and the respondent. In other words, "a man's head could not be shaved in his absence". Simplistic as it may sound, it places value on the principle of natural justice and the independent arbiter playing a key role. Every party must be heard before a decision or judgment is passed on a matter involving them.

Efik philosophy thus places high premium on brotherhood and respect for human dignity. Material wealth or worldly possession counted for little, as people or persons were most precious, as reflected in the saying "*owoediiyene, ofongikpuikpu*,". It has been submitted that the Efik's had a well developed judicial system long before the advent of British colonialism in the region. The justice system involved the moral resolution of issues; which revolved around punishment, reward, and restitution. Efik jurisprudence was therefore greatly influenced by the 'cherished' values of traditional African life in resolving issues. Such values include the value of religion and the sacred; the value of trust and justice; the value of accepting responsibility for breaking moral laws; and the value of maintaining high moral standards and good character. Some scholars have maintained that the Efik legal system had a preference for arbitration over litigation in settling disputes, as arbitration engenders mutual trust and confidence in a society which values social solidarity, communalism and complementarity 15.

The Ekpe traditional institution in Efik kingdom played and continues to play a vital role in fostering peace and social harmony amongst the Efik people. It had legislative, judicial, and executive power before colonial rule. The Ekpe society had its means of communication 16,as well as enforcement mechanism to ensure compliance and anti-social or deviant behavior were punished. It is important that the underlying ethos of respect for others rights and legitimate authority which existed in traditional Efik society is interrogated and understood. Even with the advent of Christianity and colonial influence, there was noticeable adaptation and accommodation, which allowed for effective functioning of both systems for the maintenance of law and order. The waning of the indigenous system, and the anonymity brought about by urban settlements is deserving of study, since these have eroded core values of honesty, integrity and the belief that what the Ekpe society stood for, complemented the fear of the Almighty God, in the justice system and society generally.

The indigenous customary and justice system of a third people or ethnic group examined in this concept paper, is Ndi-Igbo. They are found around the banks of the River Niger and the Igbospeaking peoples of South Eastern Nigeria. In Igbo cosmology17, nothing is absolute. Everything, everybody, however apparently independent, depends upon something and upon somebody else. "Interdependency, exhibited as reciprocity… or complementarity is the fundamental principle of Igbo philosophy," and simply stated is "Egbe bere, Ugo bere, translated as "Let the Eagle perch, let the Hawk perch". It represented the saying "Live and Let Live". This informed many Igbo speaking legal systems. This thinking and world view informs the general republican ethos of the Igbo people, with the core values of equality, justice and fairness, although women, as is the case in many other societies across Nigeria, were denied certain rights, such as inheritance of property.

Despite not having a single law making authority, the Igbo people developed a law making process which is called "itiiwu" (to make laws). Sometimes, it is spontaneous or deliberate but is all in a bid to control a mischief or wrong in the society. Every member of the Igbo society is involved in the law making venture by virtue of their membership in one or more of the various legislative agencies in Igbo society. The Umunna or family stead, includes every person born into a family as well as those born into a number of interrelated extended families who share common ancestry. The group discuss and make rules and regulations relating to the manner and season to engage in farming activities, the manner of allotment amongst members of a family or ancestral land, the clearing of bush paths and so on. Decisions of the group are explained to the female members of the household and passed down to the children. By this way, they are able to maintain uniform order in the community.

Another very important group is the Age Grade. The Age Grade is formed at the village level and comprise adult males who were born within a stated period of time (in the case of men) and a group of women who got married at a particular

period of time. The Age Grades make rules that are relevant and applicable only to members of the Age Grade. Whenever the Age Grade extended their rules and reach beyond their realm of authority, the elders called them to order. The Age Grade serves as a social indicator which separates younger persons from persons born (or who got married) before them (as the case may be). Age Grade also served as a forum for allocating duties of a public nature to their members, acted as guardians of public morality through the censorship of members behavior, and provided companionship and mutual insurance of members. This is a very significant group and continues to be relevant today. The activities of the age grade is also noticeable in other communities in Nigeria, and ought to be thoroughly investigated to see how their relevance may be optimized in contemporary modern day enterprise, and how this can adapt to urban settings, and the challenge of anonymity.

The 'Umuada' are married female members of the society. This group of women also make laws that regulate behavior amongst their members. Even in urban communities, the influence of the women groups can still be felt. They meet regularly, and can be identified through communal cooperative efforts and support they provide to one another and the support they lend to the menfolk. The potential for coalescing efforts of the age grade requires further research to determine their importance and relevance for contemporary society and the demands of our technologically driven societies.

Each of these groups do not make laws that conflict with or that are inconsistent with laws made by other groups. It is always done in the spirit of "birikambiri" that is, 'live and let live'. There are other groups serving different and complimentary purposes, such as the Umuokpu: a collection of Umuada from various Umunna. The "okpu" means that they are old and elderly. In fact, the Umunna dreaded them so much so that if there was a domestic, matrimonial or land dispute and the Umunna failed to resolve the dispute, the Umuokpu stepped in and addressed the situation. The Umudibia are medicine men who undertake a

number of roles in Igbo society. Some of the functions attributed to Umudibia include divination and provision of healing for people's ailments. The Umudibia are always seen as half- human, half spirit (okalamadu, okalammuo). They make laws that have religious undertones after which they take to the people for acceptance and approval. Another important group are the "Ndi Nze," the titled men. They are highly respected in every Igbo community. They are one of the legislative agents in the traditional society. They also have the powers to deliberate and agree on laws that will guide their society.

Igbo culture has a primary place for the deities/divinity/gods. This is also the case in Yoruba society and other indigenous societies across Nigeria. The deities have known shrines and known priests and priestesses who act as their mouthpieces. They are regarded as the protector of the community and have the right to make laws that will not hamper their protective functions. Another very important group is the Oha group. This group can also be called the general assembly. This is the supreme group or the highest human legislative body as far as the Igbos are concerned. The Igbos have always believed that power belongs to the people. They act as a legislative body because what they sanction is what law becomes. There is also a guild of masquerades, referred to as 'mmanwu'. Membership to the guild is open only to male members of the community. The laws made by the masquerades are said to reflect the wishes of the community's ancestors who even though are no longer physically present, express themselves through the masquerades 18. They were revered and their role in enforcement of rules may be said to be akin to the role the Ekpe society played among the Efik's or the Ekpo society played among the Ibibio's. The Igbo judicial system is more or less jury or trial by peers based, as is common with some other indigenous communities in Nigeria. In the following section, we examine how these indigenous practices and legal systems may be re-imagined and appropriated. This way, proper and constructive relationship management and natural justice is achieved.

Appropriating the Indigenous Customary Legal Systems for Present and Future Development Challenges:

Nigeria, like most African societies is a very plural society. The customary practices and laws of the three ethnic groups discussed in this concept paper highlight the underlying principles and philosophy for the indigenous legal and justice systems. These indigenous customary legal and justice systems cannot be dismissed on the basis repugnancy to justice or public policy, of certain practices. In reality, the intrinsic value of these systems, is that they largely reflected the social reality of the groups. They also have the potential to evolve and therefore require further interrogation. The interaction with received or imported, or imposed legal and judicial traditions and systems, should be for the mutual benefit of both traditions or systems.

Customary laws, though generally oral and passed down by tradition and practice, are living, dynamic and evolving. Written customary law is often associated with colonial-era attempts to codify customary law, which has been criticized for removing the flexibility of customary law and not allowing it to evolve with time. However, others have noted that written customary law as used in the post-colonial era provides a measure of predictability as to what the law requires, while retaining a measure of flexibility and adaptability. The indigenous customary laws are so pervasive and define and affect virtually every aspect of the life and relationships of the indigenous peoples and societies. The political authority in these ethnic group, recognize the need to provide leadership, and maintain law and order, in forms that generally affect the common good of all. Some States in the Nigerian federation have instituted customary court systems, in the attempt to preserve the system. A lot is required to be done to study, adapt and appropriate these customs and laws in their proper and relevant perspective, perhaps starting at the local council or government levels.

There is an evident need for certainty in the customary laws, if the potential is to be fully realized. Certainty in law is the bedrock of any legal system based on the

rule of law 19. The requirement of certainty must be respected both at the level of the legal system at large, and at the individual level. The lack of certainty in law deprives the law of its ability to perform its functions effectively, to form a stable legal order, and to guide the behavior of persons, in particular. In addition, indigenous customary laws must aspire to achieve justice for all, and preserve human rights. The practices that are repugnant to justice must be eliminated, for the laws to develop and meet the needs of all. These and many more are the critical questions that require answers. Any attempt at the de-legitimization of customary law either through some repugnancy test or inadequacy test will be self-defeating and unsustainable, as customary law, is part and parcel of the life of the people, society and the general legal system.

What is required is a critical appraisal of customary law's fundamental bases, and the development and adaptation of relevant and specific customary law's for contemporary challenges and effectiveness. It is evident, and as argued by Prof Nwabueze, that 'globalization increased international interaction, and the eclipse of tribal insularity necessitate a certain and appropriate form of customary law that is decipherable to all, foreigners and non-Indigenous people of Nigeria, alike 20. Under Nigerian law, after a rule of customary law is proved to exist, the court must consider whether it is judicially enforceable, or whether it is repugnant to natural justice, equity and good conscience. The 'repugnancy doctrine' was therefore routinely employed in a legal 'cleansing' mission, and may have undermined the proper development of customary law, aside from the imposition of a foreign culture and legal order. As has been argued by many jurist and scholars, the uncritical and contemporary use of the repugnancy doctrine and its precedents, may have in fact created a hiatus in the proper evolution and development of the many customary indigenous legal traditions in Nigeria and across Africa.

There is also no disputing the fact that customary law's patriarchal foundation and general discrimination against women and the girl child are problematic. The

gender discriminatory practices must be addressed by restructuring indigenous customary laws to conceptually realize the role and importance for establishing equality, fairness and justice to our women and girl child. However, this particular weakness and other uncharitable practices require sensitive and imaginative review and management before they are struck down on the basis of the repugnancy or adequacy test. The South Africa's constitutional experience of interpreting and incorporating customary law 21 in its legal system may provide some learnings. The indigenous legal systems must aim to accommodate gender equality, as well as ethnic, geographical diversity 22. It is hoped that this paper will generate sufficient interest in further interrogating the Nigerian customary law traditions within a restructured federal Constitution, to give prominence to a re-imagined customary Law that is equipped for the modern commercial, technological and digital economy and societies.

The apparent dissonance or conflict between customary law and formal received common law in Nigeria can be addressed firstly by recognizing the essential role that customary law plays in individual and communal lives in Nigeria, especially in the areas of marriage, succession, land matters and conflict resolution. A deliberate attempt should therefore be made to integrate customary law's restorative and reconciliatory dispute resolution features into the formal legal system.

Secondly, as is the case in Kenya and South Africa, the Constitution, as the fundamental law of the land needs to accord sufficient recognition and authority to the customary law of people groups. The attempt to legislate the different customary laws within the context of a centralized federal constitutional structure of government in Nigeria creates tensions. This has to be done differently. The plural and diverse nature of customary law traditions and legal order in Nigeria presents a challenge that should be addressed constructively and imaginatively. The customary laws have depth and breathe that should be explored. A functional federal system, should recognize and operationalize the diverse and plural nature

of our customary laws, as a distinct subject matter in the concurrent legislative list for the States and local governments in the country.

The local governments must be given necessary legislative teeth and authority, and be adequately funded to examine, develop and incorporate the customary laws of the communities over which they have administrative powers. The impetus is thus to develop and evolve customary law and the legal system on the bases of the legal philosophy and cultures prevalent in the community, especially on subject matters affecting marriage, family relationships, succession and inheritance laws, as well as land matters. The Nigeria Land Use Act 23, vesting of the power of control over all lands in the Governor of a State, require review, as the fact remains that families and local communities, continue to exercise their rights over land, under indigenous customary law. Property rights is a key factor for transforming our economy and empowering our peoples. Getting this done at the customary law level would be a good place to start. It is therefore necessary to address the current disconnect and re-imagine how the values and principles espoused by these indigenous body of laws and practices can be integrated with received common and civil law systems, to create a more robust legal and justice system.

The received or adopted statutes require continuous reform, and can indeed incorporate certain foundational principles and practices for reparative and mutual relationships. The recent efforts to reform and amend the Corporate law and the Income tax Acts, should deliberately aim to incorporate and reflect prevailing cooperative principles of indigenous communities. The adaptation and development of the indigenous systems in the plural societies can then proceed on the basis of whether they are fit for purpose. Every society and community has the ability to generate ideas to remain relevant. The diverse and plural systems possess the potential to offer solutions to present technological demands of society, whilst generating ideas for dealing with all human and material challenges of emerging societies. The desire and demand for natural justice and

the right to live in peace and communal harmony, is universal. Where these basic rights are denied or infringed, societies and peoples re-act basically in the same way.

It is therefore of utmost importance to appreciate some of the basic and connecting values and principles, common to, and cutting across ethnic groups and the interaction with received legal traditions and systems. This is certainly one means for properly appropriating our customary laws for development. Coming from the perspective that these practices and the societies are primitive and barbaric, only feeds into fear of the unfamiliar, rather than serve as an opportunity to evolve, develop, adapt or improve. Just as our indigenous systems had rules and customs that were obviously inhumane, they also had useful rules for trade, taxation, collegiate agricultural practices, guild systems for skills and professionalism, security and common kinship, just as may have been the case in other societies and civilizations. The customary law systems of the ethnic groups surveyed in this paper, place emphasis on the concept of restorative justice based on the understanding of restoring the societal balance that has been disrupted by crime or some civil wrong. This fosters offender accountability, reparation to the victim, and full participation by the affected members of the community. The underlying principles must be the uniting and guiding force for change and growth of our evolving and integrative legal and justice system.

Conclusion:

Culture is not static. It has the ability to change and evolve to meet new challenges. Culture references the ability of the human specie to evolve, absorb and imitate patterned and symbolic ideas that ultimately ensures their survival. Society, through its culture has inherent ability and mechanism to adapt, and innovate for development. This informs the need for conscious efforts and policy to continuously re-imagine, innovate and re-invent indigenous customary rules and systems to cater for contemporary demands. In this process, it must not be

inhibited, and can be structured and value or principle driven, based on the universally accepted principles of natural justice, equality, fair play and certainty. This article recommends the conscious and deliberate effort to recognize and build indigenous customary rules and laws on the basis of legitimate and non-discriminatory principles of fair-play, equity, justice, certainty and a good dose of realism. Forced integration into received or imported contemporary formal legal systems may be counter-productive, and the continued over centralization of functions and resources under the 1999 Nigerian Constitution will inhibit growth or adaptation of the various customary laws systems in the country. It is therefore imperative that the system is decentralized to reflect the plural nature of our society and customs. There needs to be devolution of powers to the grass root, best reflected at the local government level, and the sustained investment in developing our indigenous customary law and justice system at the local and State levels. This is required for the traditional dispute resolution mechanism of mediation and reconciliation under the subsisting customary laws systems to be properly incorporated into the formal legal and justice systems. The philosophical bases of indigenous customary laws and legal process or system remain relevant today. A critical appraisal of the indigenous customary law legacy, with an eye for the future should be a clear goal as 'each generation must discover its mission, fulfill it or betray it, in relative opacity'24.

Endnotes

1. Bassey Andah, *West Africa Before the 7th Century, p 593*, UNESCO International Scientific Committee for the Drafting of General History; ; **General History of Africa -***Ancient Civilizations of Africa (Vol 2), Editor G. Mokhtar*
2. In Kharie Zaidan v. Fatima Khalil Mohssen, [1973] 1 ALL N.L.R. 86 at 101, the Supreme Court of Nigeria.
3. The repugnancy doctrine was introduced into Nigeria in the 19th century through the received English laws. This doctrine prescribes that the courts shall

not enforce any customary law rule if it is contrary to public policy or repugnant to natural justice, equity and good conscience.

4. It is a fundamental requirement for orderly existence in families, communities and societies. If we are not to descend into a Hobbesian State of nature - Thomas Hobbes, The Leviathan, 1651. Thomas Hobbes is famous for his early and elaborate development of what has come to be known as "social contract theory", a method of justifying political principles or arrangements by appeal to the agreement that would be made among suitably situated rational, free, and equal persons. He is infamous for having used the social contract method to arrive at the astonishing conclusion that we ought to submit to the authority of an absolute – undivided and unlimited – sovereign power.

5. Jump up↑ "African People & Culture – Ashanti".

6. A. K. Ajisafe, Laws and Customs of the Yoruba People (London: Routledge, 1924). For example, among the Igbos of what is now Southeastern Nigeria, some cases were taken to the oracle e.g. Aro Chukwu Long Juju. In certain instances, trial by ordeal.

7. Ajomo M.A.: Comparative Analysis of Customary Law in Africa.

8. A problem of terminology is posed by the existence of Islamic law which is administered in some States as a distinct system and in others as a variant of customary law. Ghana, Sierra Leone and Uganda may be cited as examples of States where Islamic law is administered as a form of native law, while Kenya, Somalia, Zanzibar and Northern Nigeria may be cited as territories where Islamic or Sharia law (as in the case of Nigeria, where it has been introduced into the Nigerian Constitution), is administered as a distinct system.

9. Examples of such laws can be found in status implying slavery or servitude in Effiong Okon Ata Ekpan v. Henshaw & Anor ((1930) 10 NLR 65) family law in Amachree v. Goodhead ((1923) 4 NLR 101) land law in Awo v. Cookey Gam ((1930) 10 NLR 65)) and a host of others.

10. 1931) AC 662 at p. 673.- Lord Atkin in the case of EshugbayeEleko v Government Administration, said that barbarous custom must be rejected on the ground of Repugnancy to Natural Justice, Equity and Good Conscience. To him it is the court that can define Repugnancy and also determine what it constitutes and of course which Custom or Customary Law passes the Test.

11. Elias, T.O. *British Colonial Laws-a Comparative Study of the interaction between English and Local Law in British Dependencies* (1962) pp.103-104.

12. Sophie Bosede Oluwole*: Socrates and Orunmila, Two Patron Saints of Classical Philosophy, pp.145-146.*

13. Source: Wikipedia.

14. Tunde Onadeko, Yoruba Traditional Adjudicatory Systems; African Study Monographs , 29(1): 15-28, March 2008

15. Inameti, Etim Edet, ' Administration of Justice in Pre-colonial Efik Land', Dept of Philosophy, University of Calabar.

16. The Nsibidi is a system of symbols or proto-writing developed in what is now Southeastern Nigeria. They are classified as pictograms, though there have been suggestions that some are logograms or syllabograms.

17. Dr Chinweizu, in Oluwole, 1997: pp 11-12.

18. BonachristusUmeogu, Igbo African Legal and Justice System: A Philosophical Analysis Open Journal of Philosophy 2012. Vol.2, No.2, 116-122 Published Online May 2012 in SciRes (http://www.SciRP.org/journal/ojpp).

19. See Leoni (1972) (The author comes to the conclusion that the rule of law, in the classical sense of the expression, cannot be maintained without actually securing the certainty of the law, conceived as the possibility of long-run planning on the part of individuals in regard to their behavior in private life and business). See also Hayek (1960) (It is proclaimed that "the importance which the certainty of the law has for the smooth and efficient running of a free society can hardly be exaggerated...").

20. Nwabueze R. N, The Dynamics and Genius of Nigeria's Indigenous Legal Order , Indigenous Law Journal/Volume 1/Spring 2002.

21. Jill Zimmerman, "The Reconstitution of Customary Law in South Africa: Method and Discourse" (2001)17, Harv. Black Letter L.J. 197

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