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A LEGAL ANALYSIS OF THE PRE-COLONIAL IGBO PEOPLES' PERSPECTIVE TO CRIMINAL JUSTICE

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ABSTRACT: *Research shows that whereas the intuition against criminality is of universal human nature, the approach of a particular society to criminal justice administration may differ from that of other societies. According to the legal pragmatism theory, the customs, beliefs and historical circumstances of a people are relevant to judicial reasoning as well as judicial approach to crime resolution. Against this background, this research carefully examines the pre-colonial Igbo society and finds that the society had its own peculiar criminal justice system by which criminal disputes were resolved. This article therefore seeks to analyze the Igbo people's mindset on the twin issues of crime and justice. In aid of this analysis, the researcher will discuss the Igbo customary judicial procedures, such as mediation, criminal arbitration, oath taking, and trial by ordeal as well as important customary practices such as igba afa (divination), igba ndu (covenant/bonds) and ikpu aru (purification). Notwithstanding the criticism of some of these practices in terms of human rights issues, procedural accountability, etc, the researcher argues that Igbo criminal justice procedures and practices are characterized by social harmony, flexibility, social pressure, and strong religious beliefs.*

KEYWORDS: Crime, Justice, Igbo, Pre-colonial.

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INTRODUCTION

Before the advent of the British colonial administration in Nigeria, the native societies had their own government and more particularly a judicial structure for the settlement of criminal disputes. The pre-colonial Igbo society was not an exception. The Igbo society had its own peculiar notion of the concept of crime as well as formidable judicial procedures, such as mediation, criminal arbitration, oath taking, and trial by ordeal, igba afa (divination), igba ndu (covenant/bonds) and ikpu aru (purification) by which criminal cases were resolved. Indeed, despite their criticisms in terms of human rights concerns, these judicial procedures and practices were characterized by social harmony, flexibility, social pressure, and strong religious beliefs.

What is the Nature of Crime in the Pre-colonial Igbo Society?

Deriving its force from ancestralism (*mgbe gbo*), crime is as old as man. To the Igbos, crime which is mostly referred to as 'alu ani' or 'aru ala' is immemorial - "aputara uwa huwa".[1] As rightly pointed out by E. Edeh, the Igbos have an inherited pattern of thought and action (i.e 'omenani' or 'omenala') that is mysteriously in harmony with the totality of all that is (including crime).[2] According to A. G. Karibi-Whyte, 'crime' is any anti-social behavior which falls within the general disapproval of the community.[3] The element of community disapproval or 'social expediency'[4] is relevant to understanding what a crime is amongst the Igbos. Although M. M. Green opines that the idea of offense against the community amongst the Igbos is "hard to say", she concedes that the summoning of the village through a drum and sharing of goats before a case is judged indicate the notion of community concern in crimes amongst the Igbos.[5] Amongst the Igbos, the element of community disapproval in determining the nature of crime is never in doubt. This is rooted in their belief that crime produces a negative effect not only on the individual offender and his family but also on his community at large.[6] This means that even though one person might murder another person, murder itself is considered as an offense to everyone in the society. Therefore, the nature of crime amongst the Igbos aligns with the 'harm' and "offense" principle but in a more expansive sense. Beyond the notion of harm as "any bodily hurt, disease, or disorder" as contained in section 1 (1) of the Nigerian Criminal Code, the Igbo's view of 'harm' agrees more with Joel Feinberg's definition of harm as "the thwarting, setting back, or defeating of an interest (which) consist of all those things in which one has a stake".[7] Commenting on Igbo's perspective to crime, E. Edeh rightly states as follows:

Accordingly, the Igbo way of life emphasizes 'closeness' but not closed-ness.'…When, therefore, a person commits a societal or moral offense, he is in effect regarded as having

[1] Jude C. U. Aguwa, "Taboos and Purification of Ritual Pollutions in Igbo Traditional Society: Analysis and Symbolisms" (1993) Bd. 88, H. 4/6, Anthropos, page 542 (pp. 539-546)
[2] Emmanuel Edeh, "Towards an Igbo Metaphysics" (Loyola University Press, Chicago, 1985) pg. 103 (Emphasis Mine)
[3] A. G. Karibi-Whyte, "Groundwork of Nigerian Criminal Law" (Nigerian Law Publications Ltd, 90, Lewis Street, Lagos, 1986) pg. 22(hereinafter referred to as Groundwork of Nigerian Criminal Law)
[4] Ibid, pg. 40
[5] M. M. Green, "Igbo Village Affairs" Second Edition (Routledge Taylor & Francis Group, 711, Third Avenue New York, 1964)
at Pg. 111
[6] J. C, Ekei "Justice in Communalism: A Foundation of Ethics in African Philosophy" (Realm) Communication Ltd, Surulere, Lagos, 2001) pg. 209
[7] See Joel Feinberg, "The Moral Limits of Criminal Law: Harm to Others" (Oxford University Press, 1984) pp. 215-216

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severed himself from this closeness, thereby stepping outside, as it were, the spiritual substance of the culture and running the risk of not fulfilling himself as a person.[8]

The 'harm' or 'offense' in this case is seen as not only perpetrated against an individual but also against the basic beliefs, tenets and taboos of the people. This is because from an African perspective as well as Igbo perspective, crimes are "acts fundamentally in conflict with the people's basic beliefs and taboos."[9] It is in the light of this perspective that the argument on whether the element of intrinsic wrongfulness is absolutely fundamental in underpinning the nature of crimes amongst the Igbos cannot be avoided. The Igbos' notion of intrinsic wrongfulness of crime is underscored by F. N. Ukaegbu who writes of crime amongst the Igbos as that which shames human dignity and breaches the custom, morality and peace of the land.[10] In this connection, theft, murder, incest and witchcraft are clear examples. To the Igbos, these acts can cause a rupture within the existing communal harmony, relationship, justice, and order.[11] However, the researcher finds that there are certain acts amongst the Igbos which are treated as crimes but whose intrinsic wrongfulness is doubtful. For instance, in Nanka, a community in Anambra State, it is a crime for a widow to see the corpse of her husband.[12] Using the reasonable man's test, one cannot but wonder how a woman's seeing of her own husband's dead body can be said to be intrinsically wrong. But, as rightly pointed out by a learned scholar, the notion of intrinsic wrongfulness, as long as African criminal law is concerned, has to be "in the manner understood by the political authority and accepted by the mores of the society.[13] Another author confirms this when he states that: "For the Igbos, an evil is regarded as an offense against omenani." According to F.U. Okafor, the term 'omenani' is 'the sum total of Igbo religion, morality, custom and etiquette.'[14] The intrinsic wrongfulness of crime in Igbo, therefore, is derived from its being offensive to the fundamental mores of the Igbo society. The analysis made by C. K. Allen on the two major elements of crime can also be applied to the nature of crime amongst the Igbos. The author stated as follows:

Throughout the whole jurisprudence of crime, we can distinguish two powerful currents of quite different nature springing from different sources. They are the elements of intrinsic wrongfulness and social expediency…but of the two, the principle of social expediency is that which predominates. That is to say, although intrinsic wrongfulness, in the moral sense is a characteristic of many crimes, they are punished not merely because they are wrongful but because they are wrongful in a degree which is a menace to the society…there are many prohibitions in criminal law which have nothing to do with intrinsic rightfulness or wrongfulness. They are prompted by considerations of social expediency more artificial and less self-evident than the prohibition of the more elementary forms of wrongful aggression"[15]

[8] Emmanuel Edeh "Towards an Igbo Metaphysics" (Loyola University Press, Chicago, 1985) pg. 105

[9] See Akintunde Emiola, "The Principles of African Customary Law" (Emiola Publishers Limited, 1997) pg. 20
[10] F. N, Ukaegbu "The Igbos: the Afrikan Root of Nations" (Heinemann Educational Books Nig. Plc, Ibadan, 2005) pg. 158
[11] Ekei, supra (n. 6) at pg. 203
[12] Ibid pg. 125
[13] A. G. Karibi-Whyte, "Criminal Policy: Traditional and Modern Trends" (Nigerian Law Publications Ltd, Lewis, Lagos, 1998) pg. 28 (hereinafter referred to as Criminal Policy: Traditional and Modern Trends)
[14] F. U, Okafor "Igbo Philosophy of Law" (Fourth Dimension Publishing Co Ltd, Enugu, Nigeria, 1992) pg. 62

[15] C. K. Allen, "The Nature of a Crime" (1931) Vol. 13, No. 1, Journal of Comparative Legislation and International Law, pg. 13-14 (pp. 1-25)

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Interestingly, in the light of the above analysis, F. U. Okafor's view that it is 'only the violation which is held as 'nso' or 'alu' amongst the Igbos that 'could be regarded as a criminal offense to use western legal term'[16] clearly raises the issue of whether certain acts which are breaches of human law are not crimes per se. Indeed, as confirmed by M. M. Green, amongst the Igbos, there is a difference between 'alu' (which is breach of divine law) and 'ida iwu' (breach of human law without a supernatural reference).[17] While offenses that are 'alu' are offenses that infringe the laws of the earth-god who is the guardian of morality and the controller of the minor gods of fortune and economic life,[18] F. U. Okafor explains that offenses against human law are those that deal with social, economic and political matters.[19] The scholar lists offenses such as indiscriminate fishing in Igbo coastal towns of Anam, Aguleri and Miata; farming on market days; failure of a woman to turn up with her group during the days slated for cleaning the spring and its surroundings, flouting a law on boycotting the market of an enemy village group, etc, as examples.[20] A breach of the law creating these offenses is punished with a heavy fine. The point here is that, both Okafor and Green opine that these offenses are not crimes per se because they do not 'pollute the land.' However, it is submitted that the distinction is only a matter of classification and degree. Clearly, the element of social expediency is inherent in those breaches although more artificial and less self-evident than the prohibition of the more elementary forms of wrongful aggression. This is more so as F.U. Okafor confirms that the Igbo positive laws creating those offenses bear a stamp of legitimacy; they pass the test of reasonableness; they are sufficiently promulgated; they are intended for common good; and they are in line with the established custom (omenala) of the Igbo people.[21] Therefore, as rightly confirmed by a learned scholar, a breach of those laws also constitutes a criminal offense even though they are distinct in nature from 'alu'.[22] However, it is submitted that while a breach of those laws can be regarded as simple criminal offenses, the offenses which are 'alu' can be regarded as serious criminal offenses.

What is the Difference Between Crime and Civil Wrong in the Pre-colonial Igbo Society?

There appears to be a blurred line between crime and civil wrong in Igbo law. To C. K Meek, the distinction between criminal matters and civil matters in Igbo is 'not definite'.[23] In attempting to distinguish between them, M. M. Green opines that: 'if there is any point in trying to apply the categories of criminal and civil law to Ibo judicial matters, then presumably offenses against 'ala' and probably other such 'nso' behavior might be classified as criminal cases.'[24] However, as rightly noted by Chinwuba Obi, these breaches, which Green argued to be criminal in nature, are 'not just offense(s) against the gods or ancestors (however serious these offenses may be in themselves) but a breach of one's duty to one's

[16] F. U, Okafor supra (n.14) at pg. 39

[17] Green, (n. 5) at pg. 102
[18] Edeh, (n.8) pg. 103
[19] Okafor, (n. 14) pg. 50
[20] Ibid pg. 48-49
[21] Ibid pg. 51
[22] Ikenga Oraegbunam, "The Principles and Practice Of Justice In Traditional Igbo Jurisprudence" (2009) 6, OGIRISI: a New Journal of African Studies (pp. 53-85)
[23] C. K. Meek, "Law and Authority in a Nigerian Tribe: A Study in Indirect Rule" (Oxford University Press, London, 1937) pp. xii, 209-220
[24] Green, (n. 5) pg. 102

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neighbor, an invasion of another's right."[25] Another distinguishing element which Green recommends is that of community involvement. The author argued that "the commission of an offense which is forbidden would seem to involve the whole community and not merely the individuals concerned."[26] Commenting on Green's findings, a learned Nigerian jurist opines that "collective action" therefore "was the only character which distinguished a civil offense from a criminal one amongst the Igbos.[27] On another occasion, however, the learned jurist warns that his emphasis on collective action 'should not be misunderstood as suggesting that conduct injurious to the individual and in respect of which the individual may seek redress is not regarded as criminal.'[28] This is true because, for instance, theft is a crime in Igbo law but it is not in all cases of theft that community action is taken.

E. Onoja submits that an act is a crime because its proceedings will terminate in punishment of the offender.[29] Augie (JCA), a learned Nigerian judge has also held that "punishment is what criminal law is all about and compensation is all the civil law is all about."[30] Indeed, the Igbos emphasize the inevitability of punishment for the perpetration of crime (especially the serious criminal offenses) but this does not mean that cases where an offender is simply reprimanded without punishment (e.g. first time theft of a trifle by a family member) are impossible.[31] Thus, punishment may not always be a distinguishing hallmark of crime to separate it from civil wrongs even amongst the Igbos.[32]

Ritual cleansing may as well be considered as an important factor in the distinction between criminal cases and civil wrongs amongst the Igbos. However, just like others, this factor is not without some limitations. First, it is not all criminal offenses in Igbo that require ritual cleansing. The second reason is that just like collective action, a distinction based on ritual cleansing is a matter of procedure. Max Gluckman supports the "procedure school' which he describes as a 'wiser' approach.[33] However, the defect in the approach is that it ascribes criminality to a crime merely because of the means of seeking redress. Be that as it may, it is submitted that despite their limitations, the elements of community disapproval, intrinsic wrongfulness based on the mores of the Igbo society, punishment, ritual cleansing are generally important in determining the nature of crimes amongst the Igbos. The uncertainty of the distinction between criminal and civil offense is a perennial and inscrutable problem not only to Igbo customary criminal law but to indigenous African Law.[34] In the connection, the opinion of a learned Nigerian jurist is apposite:

With respect to customary law, it is not certain whether restitution, compensation or punishment, or whether collective enforcement or enforcement by the sovereign alone determined the character of the injury. The impression appeared to have however been that, in fact, the distinction between civil and criminal law as is known in 'civilized' legal systems is completely foreign to African law.

[25] Chinwuba Obi, "Ibo Law of Property" (Butterworths & Co (Publishers) Ltd, London, 1963) pg. 29
[26] Green (n. 5) pg. 102
[27] Karibi-Whyte, A. G, "History and Sources of Nigerian Criminal Law" (Spectrum Law Publishing, Lagos, 1993) at pg. 106
[28] 'Criminal Policy: Traditional & Modern Trends' (n. 13) pg. 29
[29] E. Onoja, 'Fundamental Principles of Nigerian Criminal Law' (Greenworld Publishing Company, Keffi, Nasarawa State, 2015) pg. 17
[30] See Abacha v. State (2006) 4 NWLR (Pt. 970) 239 at page 293
[31] See Okafor (n. 14)
[32] E. Onoja, (n. 29) at pg. 16
[33] Max Gluckman, 'Ideas and Procedures in African Customary Law' (Oxford University Press, London, 1969) pg. 67
[34] History and Sources of Nigerian Criminal Law, (n. 13) at pg. 106

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Perspective of the Igbo Society to Criminal Justice

Having discussed the nature of crime amongst the Igbos, it is pertinent to analyze their perspective to criminal justice. Justice is a cardinal pillar of Igbo judicial and legal systems. Igbo people have a very strong sense of justice which is littered in many Igbo cultural ethos and pathos. The Igbo word for justice is *ịkwụbakaọtọ or ikpe nkwumoto*. The first word *ịkwụbakaọtọ* comprises of three different words: *ịkwụba* (to stand), *aka* (hand) and *ọtọ* (straight, up). When these words are combined, justice to the Igbo means uprightness, sincerity, straightforwardness and openness. The second word *ikpe nkwumoto* comprises ikpe (judgment), *nkwumoto* (upright standing, straightness). Contextually, taken together, both *ịkwụbakaọtọ and ikpe nkwumoto* respectively imply being upright, straightforward and just in one's words, deeds and judgment.[35] While ịkwụbakaọtọ or *"akankwumoto"* denotes justice as a virtue of a particular person, *"ikpe nkwumoto"* or *"ikpeziriezi"* refers to the expression of this virtue in practical judgment at the event of dispute. The latter can also be described as truthfulness in making judicial decisions.[36] It is clear that the term 'justice' is well defined by Igbo scholars but there is however no clear cut definition of the term 'criminal justice' in Igbo. Etannibi Alemika defines 'criminal justice' as 'the norms, processes and decisions pertaining to the enactment and enforcement of criminal laws, the determination of the guilt of crime suspects, and the allocation and administration of punishment and other sanctions.'[37] In the same connection, criminal justice to the Igbos refers to the norms, processes and decisions pertaining to the treatment of offenders in accordance with the established customs of the community. Indeed, as rightly pointed out by a learned scholar, to the Igbos, any treatment or judgment that is not consistent with the *Omenala* is not constitutional and as such null and void.[38] Thus, the Igbos believe that the handling of offenders – arrest, identification, determination of guilt, consequential punishment and sanctions must be in line with the dictates of the omenala to be valid. At the core of the concept of criminal justice in Igbo indigenous communities, therefore, are the normative ideas of transgression against the fundamental mores of the society and the far-reaching consequences on the offender, the victim and the society at large. According to F. U. Okafor, "The just man in the Igbo moral estimation is one who gives to everyone what is his due; one who tells the truth regardless of who or what is at stake; one who is objective in his judgment." Three elements can thus be deduced in the Igbo people's perspective of criminal justice: (1) Everyone must be given what is his due; (2) it is impartial and (3) it is objective. Therefore, criminal justice in the Igbo perspective is a system by which everyone involved in or affected by a crime is given what is their due; a system that is conducted in truth regardless of who or what is at stake and a system that is objective. There are about five perspectives of criminal justice: crime control perspective, rehabilitation perspective, due process perspective, non-intervention perspective, equal justice perspective and restorative perspective.[39] The researcher will now examine the approach of the Igbos to criminal justice in the light of these perspectives.

[35] Chinedu Cletus Agbo, Ahmad Zuber, Robertus B Soemanto, "Achieving Global Peace through the Igbo Concept of Justice in Language and Proverbs" (2019) Volume-8, Issue- 1C2, International Journal of Recent Technology and Engineering (IJRTE) pg. 556 (pp. 556-563)
[36] Ikenga Oraegbunam, (n.22) pg. 56
[37] Etannibi E. O. Alemika, "Criminal Justice Norms, Politics, Institutions, Processes and Constraints" (pp. 11-33) in "The Theory and Practice Of Criminal Justice in Africa" Monograph 161, June 2009, African Human Security Initiative (pg. 11)
[38] Oraegbunam, (n. 22) pg. 58
[39] Larry Siejel and John Worral, "Introduction to Criminal Justice" (Cengage Learning, Boston, USA, 2018) pg. 21

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a. **Crime Control Perspective**: This perspective emphasizes the control of dangerous offenders and protection of the society through harsh punishments as deterrence.[40] Indeed, the society in order to exist and progress has to exercise a certain control over its members since any marked deviation from the established ways is considered a threat to its welfare. E. E. Alobo argues that such control is the basis on which the criminal justice regime is predicated and justified.[41] The criminal justice system thus creates a platform, ways and means by which society enforces conformity to its norms. Punishment of a criminal is fundamental to Igbo criminal justice. To the Igbos, there is no justice when a criminal is not punished or adequately punished for his offense. This is why they believe that an offender who escapes punishment in this life will still be punished in his next lifetime (re-incarnation).[42] Retributive justice is rooted in Igbo criminal justice system as can be gleaned from their expressions such as: 'Isi kote ebu o gbaa ya' (the head that touches wasp must be stung); 'ihe onye metalu k'eji akwu ya ugwo' (whatever evil one commits, one bears the consequences) and 'mkpuru onye kuru ka o ga-ahoro (whatever one sows, that he shall reap). The Igbo retributive justice system is aimed at making the offender feel the impacts of his actions on the victim and the community. That is, the offenders are made to appreciate the fact that their actions harm more than the individual victims, for they also harm the community. Igbo societies view themselves as collectives responsible for the well-being of all members of the community.[43]

b. **The Restorative Perspective:** This perspective sees the goal of the criminal justice system as making a systematic response to wrongdoing that emphasizes healing of victims, offenders and communities wounded by crime. It stresses peacemaking, not punishment.[44] Indeed, justice for traditional African communities (including the Igbo society) is apology, forgiving and forgetting and eventually restoring social relations in the interest of peaceful coexistence.[45] This approach is deeply rooted amongst the Igbos, hence the expression: '*Iwe nwanne adighi eru n'okpukpu'* (the anger of a brother/sister does not get to the bone). This means that there is always room for forgiveness and restoration of a criminal amongst the Igbos. The Igbo word for restoration is *'nweghachi'* which means to return something or someone to an original state.' Traditional Igbo society was based on strong social bonds or solidarity with the nuclear and extended family, as well as the kin group and community. This is because the people prided themselves as "being their brothers' keepers", in sickness and in health, no matter the circumstances (except perhaps in crime).[46] Thus, a person who committed an abominable offense against the gods and the ancestors were, in most cases, required to make necessary sacrifices to appease the gods and undergo some ritual cleansing and purification.[47] Thereafter, the offender was accepted back into the society, with all his/her rights and privileges restored. In as much as the Igbos adopt a broad

[40] Ibid pg. 21
[41] E. E. Alobo, 'Criminal Law and Sexual Offences in Nigeria (Princeton and Associates Publishing Co Ltd, Ikeja, Lagos, 2016) pg. 13
[42] Okafor, (n. 14) pg. 38-39
[43] Elechi O. Oko, "Igbo Indigenous Justice System" in Viviane Saleh-Hanna, "Colonial Systems of Control Criminal Justice in Nigeria" University of Ottawa Press, 2008, pg. 404 (pp. 395-415)
[44] Siejel & Worral, (n. 39) at pg. 27
[45] Mehari Yimulaw Gebregeorgis, "Discursive Depiction Of Customary Conflict Management Principles In Selected African Proverbs" (2015) Vol. 62, Folklore (Tartu) Pg. 241 (Pp. 225 – 246)
[46]Emmanuel Igbo and Cyril Ugwuoke, "Crime and Crime Control In Traditional Igbo Society Of Nigeria" Vol.3, No.13, 2013, Developing Country Studies, pg. 161 (pp. 160-167)
[47] Ibid page 162

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interpretation of the concept of "victim" in criminal law (to include the actual victim of the crime, the wrongdoer and the community), it is pertinent to note that the actual victim of the crime is not left out of the picture in the justice administration system. For instance, in cases of theft, it is expected that the offender will make restitution,[48] and reparation is an important tradition in the resolution of murder cases.[49] Therefore, the Igbo perspective of criminal justice accords with the principle of restorative justice which views the primary harm as experienced by the victim as one that extends through the web of relationships to include the victim's immediate community of support, the wrongdoer and his community of support, and the wider community.[50]

c. **Equal Justice Perspective:** The proponents of this theory believe that all people should receive the same treatment under the law, and that frustration arises when two people commit the same offense but receive different punishments.[51] This perspective is very crucial in Igbo administration of criminal justice. When a crime is committed, it is the omenala that will be followed no matter whose ox is gored. That is why the Igbos say "Ekpegbuo nwa ogalanya, ebufee ya n'ama nna ya" (if a rich man is found guilty, he is led past his domain).[52] This implies that the same treatment given to a poor man when he commits a crime will be meted out on a rich man when he commits a crime.

d. **Due Process Perspective:** This perspective emphasizes fair treatment of accused persons in terms of safeguards against arbitrary or unfair judicial or administrative proceedings.[53] Criminal justice amongst the Igbos is deeply rooted in the principle of natural justice. In resolving criminal cases, the essence of the Igbo procedure of *'i ghanye oji n'umunna'* (lodging of action before the elders) is to create a platform for the hearing of the complainant's case as well as the accused person's defense in order to arrive at the truth of the matter. To arrive at the truth, both sides must be heard otherwise any judgment given will be treated as untruthful and thus unacceptable.[54] This is why criminal accusations are examined seriously and it is a punishable wrong for a person to make unfounded criminal allegations. M. M. Green confirmed this point in her account of how a criminal allegation of stealing was resolved between two women from different villages in Anambra State.[55] In that case, after hearing the case of the parties, it was clear that the allegation of stealing was based on mistaken facts, and as a result, the complainant was punished inter alia with a fine. In traditional African societies, the accused person is subjected to due process of law although the type of legal evidence required for the proof of guilt may differ. For instance, in some cases, reliance may be placed on supernatural means to ascertain the guilt or otherwise of an accused person. Although modern legal systems will discountenance such procedures, if people believe a

[48] Okafor, (n. 14) pg. 38
[49] F. A, Ezenwoko & J. I Osagie, "Conflict and Conflict Resolution in Pre-Colonial Igbo Society of Nigeria**"** (2014) Volume 9, Number 1, Journal of Studies in Social Sciences, pg. 146 (pp.135-158)
[50] Jennifer J. Llewellyn, "Restorative Justice in Transitions and Beyond: The Justice Potential of Truth Telling Mechanisms for Post-Peace Accord Societies" in Tristan Anne Borer, ed, *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies* (Notre Dame: University of Notre Dame Press, 2006) Pg. 93 (pp. 83-113)
[51] Siejel & Worral, (n. 39) pg. 26
[52] Anyabuike Cyril, "Translation of Igbo Proverbs and Igbo Worldview" International Journal of Humanities and Social Science Invention (IJHSSI), Vol. 9. Issue 6, June 2020, pg. 6 (pp. 1-12)
[53] Larry Siejel & John Worral (n. 39) pg. 23
[54] C. C. Agbo etal "Achieving Global Peace through the Igbo Concept of Justice in Language and Proverbs" Volume-8, Issue- 1C2, May 2019, International Journal of Recent Technology and Engineering (IJRTE) pg. 562 (pp. 556-563)
[55] Green, (n. 5) pg. 112

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situation to be real, they are real in their circumstances.[56] This is true because the cultural environment of a people influences their perception of justice. Thus, indigenous approaches to justice, as opposed to Western culture, develop holistically from deep-seated beliefs of the interconnectivity of all life forms[57]

e. Rehabilitation Perspective: The proponents of this perspective see crime as an expression of frustration and anger created by social inequality that can be controlled by giving people the means to improve their lifestyles.[58] To some extent, this perspective is applicable to the Igbos. The Igbos say that *'E jiri otu aka kuo nwata ihe, e jiri aka nke ozo guguo ya* (If one hand is used in beating a child, the other one is used in consoling him).[59] The causality principle is a major factor underpinning the Igbos' rehabilitative perspective to criminal justice. That is, the Igbos and indeed most African cultures recognize the interrelated roles of all things, including the visible and invisible realities.[60] Chukwuemeka Ekei notes this when he writes that 'in the hermeneutical interpretation of cause and effect the African-Igbo goes beyond the 'how', and enquires into the 'why.'[61] Explaining the Igbo proverb that says, "Wherever something stands, something else will stand beside it", a writer confirms that to the Igbos there is no one way of looking at things.[62] The Igbo word for 'rehabilitation' is 'mmezighari' (to repair). It presupposes that something has spoiled which needs to be repaired or put right. This is why the Igbos see crime as that which alienates an individual from the community, a rejection of true kinship and irresponsibility which is expressed in neglect of relatives.[63] This further explains the basis for the concept of purification amongst the Igbos which is geared towards repairing that which has been spoiled. However, it appears that the Igbos subscribe to both penal rehabilitation and non-penal rehabilitation. Purification is an example of non-penal rehabilitation.[64] Penal rehabilitation refers to penal sanctions which are designed with the objective or end of rehabilitation in mind.[65] A good example of how the Igbos combine both penal and non-rehabilitation can be gleaned from the way Okonkwo in 'Things Fall Apart' was treated when he inadvertently killed his clansman. Although he was banished from his community (Umuofia) for seven years and his house and properties were burnt down, purifications were made and he was well received by his maternal kinsmen in Mbanta where he fled to. While in exile, his mother's kinsmen continually spoke to him, and on two occasions, his friend Obierika was allowed to visit him from Umuofia. Simply put, therefore, although the Igbo models of justice aim to make the offender accountable for his actions by punishing him, there is

[56] Olukayode O. Taiwo, "Traditional Versus Modern Judicial Practices: A Comparative Analysis of Dispute Resolution Among the Yoruba of South-West Nigeria" *Africa Development / Afrique et Développement* Vol. 23, No. 2 (1998), pg. 222, pp. 209-226
[57] Adrian Pop, 'Traditional Approaches In Alternative Dispute Resolution: A Brief Overview' (2014) 1 Conflict Studies Quarterly pg. 37 (pp. 34-48)
[58] Siejel & Worral, (n. 39) pg. 23
[59] Anyabuike (n. 52) pg. 3
[60] E. A. Ruch, and C. B. Anyanwu, 'African Philosophy: An Introduction to the Main Philosophical Trends in Contemporary Africa' (Catholic Book Agency, Rome, 1984) pg. 124
[61] Ekei, (n. 6) at pg. 101
[62] Chinwe M. A. Nwoye, "Igbo Cultural And Religious Worldview: An Insider's Perspective" (2011) 3 (9) International Journal of Sociology and Anthropology page 313 (pp. pp. 304-317)
[63] Ekei, (n. 6) pg. 224
[64] Igbo and Ugwuoke, (n. 46) pg. 162
[65] Gwen Robinson and Iain Crow, 'Offender Rehabilitation: Theory, Research and Practice' Sage Publications Limited, London, 2009, pg. 7

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usually room for reintegration of the offender and the purpose of Igbo criminal justice is to restore peace and harmony in the community.

f. Non-Interventionist Perspective: This perspective favors the least intrusive treatment possible: decarceration, diversion and decriminalization.[66] The proponents of this perspective are concerned with the stigma that a convicted offender bears when he/she is branded a 'murderer' 'thief' or rapist, etc. They therefore call for the reduction of penalties and the legalization of non-serious victimless offenses.[67] It is hard to ascertain the exact extent to which the Igbos subscribe to this perspective although it has been expressed that the Igbos don't judge.[68] What is certain is that stigmatization of offenders is not uncommon to the traditional Igbo criminal justice system especially where the offense is committed intentionally, or the offender is caught in flagrante delicto. The researcher's submission finds support in M.M. Green's narration of the treatment of a woman who was caught in the act of stealing in Umunumu market of Afo Egbu Community (an Igbo community). According to the author, when the woman was caught, some women who were present in the market, "took her basket away from her and tore her cloth and beat her."[69] The offender went home with stigma and was later fined by the market women of her community in accordance with legal usage.[70] It is important to note that M.M. Green referred to the offender as one "who had the reputation of being a habitual thief" in her community.[71] This means that the offender was known for stealing and was made to live with the stigma. Even for offenses committed inadvertently, the offenders are often not spared of stigmatization. A good example is the treatment of Okonkwo, in 'Things Fall Apart' when he inadvertently killed his clansman. His houses and farms were destroyed and his animals were killed, and he and his family were banished from the clan for seven years.[72] Happily, however, with the advent of globalization and proliferation of educational institutions, the Igbo criminal justice system have gradually yielded to some points of the non-interventionist school in that some acts which were hitherto offenses have now been decriminalized e.g. giving birth to twins, osu caste system, etc.

METHODS OF RESOLVING CRIMINAL CASES AMONGST THE IGBOS

Mediation

Mediation, at its core, is a negotiation "that includes a third party who is knowledgeable in effective negotiation procedures and can help people in conflict coordinate their activities and to be more effective in their bargaining"[73] Mediation emphasizes the participants' responsibility for making decisions that affect their lives. In the African dispute resolution system, there are usually two stages involved in the history of a dispute: (i) negotiation

[66] Siejel & Worral, (n. 39) pg. 24
[67] Ibid pg. 25
[68] Ukaegbu, (n. 10) pg. 271
[69] Green, (n. 5) pg. 114
[70] Ibid
[71] Ibid pg. 113
[72] C. Achebe, 'Things Fall Apart' (Heinemann Educational Books Ltd, London, 1958) pg. 87
[73] C Moore, "The Mediation Process: Practical Strategies for Resolving Conflict (2nd Edn, Jossey-Bass Publishers, San Francisco, 1996) pg. 14

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between the two sides; and (ii) a hearing before an impartial or superior arbiter.[74] It is usually when the first stage fails that the matter will be referred to the second stage. Therefore, the resort to deities for settlement of disputes usually happens when other options (including mediation) to amicably settle issues between conflicting parties have been exhausted. What mediators do is that they encourage integrative and facilitated problem-solving negotiation that seeks a mutually agreed decision among disputants. Mediation practice has evolved to include mediation by community members concerning offenses committed within the community. Victim offender mediation (VOM) aims to create a dialogue driven process with restitution and reconciliation as the principal aim.[75] One of the basic traits of the Igbo traditional identity is peaceful coexistence. The Igbo maxim *'onye aghana nwanne ya'* (no one should be left behind) captures the concept of peace in Igbo traditional society. This maxim is anchored in the assumption that equity and fairness are the bedrock for peace and progress. As rightly observed by some scholars, for the Igbos, the purpose of mediation is 'rarely to pronounce judgments or to apportion blame, but to resolve issues or reach a compromise.'[76] In this connection, one cannot but agree with Fabian Ukaegbu when the author asserted that "the Igbos with their inquisitorial system do not judge anyone. The highest they do is to carry out their basic investigations, mediate, negotiate, and resolve and reconcile matters within their human limits."[77] This view also finds support in M. M. Green's analysis of the resolution of a case that bordered on an allegation of stealing between two women of Umueke and Umunumu communities in Anambra State. The author narrated how, under the auspices of some Igbo female mediators, a woman who accused another woman of stealing admitted that the allegation was unfounded and agreed with the mediators to rectify her wrong by compensating and taking palm wine and oil to the accused woman so that they might eat together and thus make peace.[78] Therefore, it is submitted that the Igbo's pattern of resolving crimes within the context in which the conflict originally occurred as seen above, is better than transferring it to a specialized institution that has no social connection to the community or group from which the conflict originated. This is more so because it gives the community the opportunity to express its shared outrage about the offense while the victim is also given a chance to voice his or her story, and the offender can directly communicate his or her need for social reintegration and treatment.[79] Indeed criminal mediation is effective because it is designed to address a dispute's underlying issues, give the parties a chance to be fully heard, and provide follow-up to reduce potential recidivism.[80] In African traditional societies (including the Igbos), mediators are selected from the communities of the disputants and the roles they play include pressurizing, making recommendations giving assessments, conveying suggestions on behalf of the parties, emphasizing relevant norms and rules, envisaging the situation if agreement is not reached, or repeating of the agreement already

[74] Anthony Allot, 'Essays in African Law' (Butterworths & Co Publishers Ltd, London, 1960) page 119 (hereinafter referred to as Essays in African Law)
[75] Simon Robins, "Restorative Approaches to Criminal Justice in Africa: The Case of Uganda" in "The Theory and Practice Of Criminal Justice in Africa" Monograph 161, June 2009, African Human Security Initiative, pg. 63 (pp. 1-116)
[76] Emmanuel Nweke Okafor and Tatree Nontasak, "Maintaining an Igbo Peaceful Culture in a Disruptive World' being a paper presented at the 11th National Academic Conference of 2019, Faculty of Peace Studies and Diplomacy, Siam University, Thailand,) pg. 701, available at https://e-research.siam.edu/wp-content/uploads/2019/05/MAPD-2018-A200-The-concept-of-peaceful-environment-in-igbo-spirituality-compresses.pdf accessed on February 8, 2022
[77] Ukaegbu, (n. 10) pg. 271
[78] Green, (n. 5) pg. 113
[79] See Larry J. Siejel, "Criminology: Theories, Patterns and Typology" Wadsworth Cengage Learning, USA, 2010, pg. 260
[80] Larysa Simms, "Criminal Mediation is the BASF, of the Criminal Justice System: Not Replacing Traditional Criminal Adjudication, Just Making It Better" (2007) Vol. 22 (3) OHIO STATE JOURNAL ON DISPUTE RESOLUTION, pg. 804 (pp. 797-838)

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attained.[81] Larysa Simms opines that mediation is deemed most effective in the minor crimes context when the relationship between the disputing parties is marginal rather than intimate. She defined marginal relationships to include those involving daily interactions without deep emotional connections, spanning groups like neighbors, commercial interaction participants, landlords and tenants.[82] However, in Igbo traditional society, criminal mediation was effective in resolving major crimes in both marginal and intimate relationship contexts.

Criminal Arbitration

According to Fulton Maxwell, arbitration is "a process whereby a private disinterested person called an arbitrator, chosen by the parties to a dispute…acting in a judicial fashion but without regards to legal technicalities, applying either existing law or norms agreed by the parties, and acting in accordance with equity, good conscience and the perceived merit of the dispute makes an award to resolve the dispute."[83] Conflict resolution through arbitration is firmly entrenched in African traditional societies.[84] The traditional Igbo community is not an exception.[85] Confirming the practice of criminal arbitration amongst the Igbos, M.M Green states as follows:

When therefore one is describing the possible courses open to an injured party it is probably correct to say that one of the normal methods is to call in a few individuals as arbitrators, in the first instance…If the small group could settle things to the satisfaction of both parties to the dispute there was no need to take matters further. A penalty would be imposed on the guilty party and if he was prepared to abide by it the thing was settled.[86]

As noted by the Supreme Court in the case of *Agu v. Ikewibe*,[87] customary arbitration is arbitrament governed by the rules of customary law. It is flexible, always subject to motives of expediency, and shows unquestionable adaptability to altered circumstances without entirely losing its character.[88] The Igbo traditional society practiced two types of arbitration – domestic arbitration and extra-domestic arbitration. Domestic arbitration applies where both parties to the dispute are from the same family while extra-domestic arbitration applies where the parties to the dispute are from different families.[89]

(a) Domestic Arbitration: This refers to the method used in settling disputes that arise within the family. It is usually presided over by the head of family assisted by the principal members of the family.[90] In a typical Igbo family setting, the father (i.e husband) is always recognized as the family head and he presides over family disputes. Criminal disputes handled in this way include violent behavior against one member by another, stealing, e.t.c.[91] As accounted by two Igbo scholars,[92] the deviant acts of his

[81] A. T. Ajayi, "Methods of Conflict Resolution in African Traditional Society" (2014) Vol. 8 (2) International Multidisciplinary Journal, Ethiopia, pg. 150 (pp. 138-157)
[82] Larysa Simms, (n. 80) Pg. 804
[83] Fulton Maxwell J, 'Commercial Alternative Dispute Resolution' (The Law Book Co. Ltd, 1989, USA) pg.55.
[84] Ajayi, (n. 81) pg. 150
[85] Oraegbunam, (n. 22) pg. 69
[86] Green, (n. 5) pg. 106
[87] (1991) 3 NWLR (180) 385
[88] See Osborn C.J. in Lewis v. Bankole (1909) 1 NLR 100-101
[89] Obi, (n. 25) pg. 27
[90] Emiola, (n. 9) pg. 37
[91] Ibid pg. 37
[92] Onyeozili, E. C, and Ebbe, O. N, "Social Control in Pre-colonial Igboland of Nigeria" *African Journal of Criminology and Justice Studies: AJCJS*, Vol.6, issue 1 & 2, November 2012 (pp. 29-43) pg. 36

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wife or wives and children were dealt with exclusively by him. If the rule violation was a victimization of any member of his family, he would convene a "court" hearing composed of his wives, older sons and daughters who would be there only to listen and witness his judgment aimed at specific and general deterrence. The facts of the matter would be laid down. The accused may call a witness or witnesses from within or outside the immediate family. If he was found guilty of the offense, he was punished, most of the time, by corporal punishment or denial of a meal, a knock on the head or a slap on one cheek, depending on seriousness of the offense. In cases of repeat persistence in serious offending, an overbearing father may rub some hot pepper by the eyes of the offender.[93] Ridicule was often the method of dealing with a family thief. In a more serious case, however, the offending member may be ostracized from the family. Acts (like incest) which amount to 'alu' may lead to this sanction.[94] In all cases, the authority of the father was not questioned by anybody in his family, as patriarchy and patrilineal formed the order of authority.[95]

(b) **Extra-Domestic Arbitration**: This refers to the method used in settling disputes arising between two families or between non-relatives.[96] If the dispute is between two families, the practice was that the head of the complainant's family would communicate the complaint to the head of the offender's family. Attempts at negotiation will be made and where negotiation fails, a day will be fixed by the two heads for a trial of the dispute. Each party thereupon would summon as many as responsible relatives of his as he can although parties may agree in advance on the number of persons to be invited to the hearing.[97] The meeting place for such proceedings is usually the house of the okpala, or the local senior ozo title holder. On the day fixed for the hearing each party is invited by the okpala to state their case. After the complainant has done so, the arbitrators may have to decide whether this is purely a case of moral (or social) obligation (in which case the parties would be asked to go back and have it settled at home (that is privately), with words like "o buro ife a ga-akpolu okwu" (this is not a thing for which a case should be called). If however, the case is allowed to go on, witnesses are called or allowed to volunteer evidence, after the parties have each stated their case.[98] Everyone present is then free to give an opinion on the merits of each party's case. As rightly noted by M. M. Green, in Igboland, "a case forbids no one." This means that on the day of hearing, anyone who is interested or whom the litigants have specially summoned, can turn up and participate in the proceedings.[99] Finally, the arbitrators will go into a final secret session – igba izu. The decision of this secret session is the final decision on the case and it is usually announced by the senior ozo title holder or ofo holder (okpala).[100] Similarly, where the dispute is between two communities, the initial step is taken by the elders of the agreed community by sending emissaries to the elders of the defaulting community drawing their attention to the default by that community.[101] When negotiation fails, the dispute may be submitted to a

[93] Ibid pg. 36
[94] Emiola, supra pg. 38
[95] Onyeozili and Ebbe, supra pg. 36
[96] Essays in African Law (n.74) pg. 119
[97] Obi, (n. 68) 27
[98] Ibid pg. 28
[99] Green, (n. 5) pg. 107
[100] Obi, (n. 25) pg. 28
[101] Achebe, (n. 72) pp. 8-9

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neutral third party for adjudication.[102] Such hearing especially takes place within the context of the village or local settlement before the village elders and is arbitrated by a respected, authoritative and impartial person (usually a priest).[103]

What is clear from the foregoing is that arbitration practice among the traditional Igbo fulfills the essential features of customary arbitration as adumbrated by the Nigerian Supreme Court in a plethora of cases.[104] These include: (1) there is an agreement between parties to arbitrate; (2) the arbitration is in line with the customary law of the parties; (3) there is the existence of the award and its publication. In Igbo traditional dispute resolution system, an arbitral award is binding on the parties.[105] However, a party who is dissatisfied with the decision of the arbitrator can appeal to a higher tribunal.[106] This distinguishes arbitration from other possible forms of dispute resolution mechanism among the people such as mediation and negotiation where the parties are free to resile midway or at the end of the process. The case of criminal assault between Uzowulu (assailant) and his wife (victim) as reported by A. Achebe is a typical illustration.[107] The facts are that, following the series of criminal assaults meted by the assailant on his victim, the neighbors of both parties and the siblings of victim made several attempts to mediate the dispute, but their decision could not bind the assailant. The dispute was then referred to arbitration. After hearing the case of the parties and their witnesses, the arbitrators found for the victim and directed the assailant to take wine to the victorious party and to tender an unreserved apology to the victim.[108] The decision was binding on the parties, and none could resile therefrom.

(c) Oath-taking: Oath-taking is a common feature of the African method of resolving criminal cases.[109] It is an integral part of the Igbo custom by which the guilty and the innocent with regard to a dispute are exposed in view of maintenance of social equilibrium and cohesion.[110] To take an oath" or "to swear an oath" is a ritual practice of making the conflicting parties or disputants and their witnesses prove the sincerity of their allegations, assertions and demands in the process of conflict resolution.[111] Based on research, the Igbos usually resorted to oath taking in the following cases:

a. In crime detection[112]

b. As a last resort in settling complicated disputes such as adultery and defamation;[113]

[102] **Emiola, (n. 9) pg. 38**
[103] Essays in African Law (n.74) pg. 119
[104] *Okere v. Nwoke* (1991) NWLR (pt 209) 317 at 316, *Ohiaeri v. Akabueze*, (1992) 2 SCNJ 76 at 94; *Onwu & Ors v. Nka & Ors* (1996) 7 SCNJ, 140 at 255; *Ojibah v. Ojibah* (1991) 6 SCNJ 156 at 169; *Igwego v. Ezeugo* (1992) 7 SCNJ 284; *Oparaji v. Ohanu* (1999) 6 SCNJ 27; *Ume v. Okoronkwo* (1996) 12 SCNJ 404; *Okereke v. Nwankwo* (2003) 4SCNJ 211 at 221 –22; *Onyenge & Ors v. Ebere & Ors* (2004) 6 SCNJ 126 at 141 – 43; *Ofomata & Ors v. Anoka & Anor* (1974) 3 ECSLR 251 at 254; *Achiakpa v. Nduka* (2001)7 SCNJ 585; *Iwuchukwu v. Anyanwu* (1993) 8NWLR (pt 311) 311 at 323; *Nzeoma v.Ugocha* (2001) FWLR (pt 48) 1299 at 1306; *Onwununkpa v. Onwuanunkpa* (1993) 8 NWLR (pt 310) 186
[105] Oraegbunam, (n. 22) pg. 69
[106] Green, (n. 5) pg. 106
[107] Achebe, (n. 72) pg. 65
[108] Ibid pg. 66
[109] **Emiola, (n. 9) pg. 42**
[110] G. O. Okogeri, "Ezi Okwu Bu Ndu in Igbo Customary Law" in N. Otakpor (ed.), Ezi Okwu Bu Ndu: Truth is Life, Hope Publications, Ibadan, 2006, 174.
[111] C. O. Ele, "Conflict Resolution Strategies In Igbo Religion: The Oath Taking And Covenant Making Perspectives**"** (2017) Vol.7 No.1 International Journal of Social Sciences and Humanities Reviews, pg. 39 (pp. 35 – 42)
[112] O. K. Edu, "The Effect of Customary Arbitral Awards on Substantive Litigation: Setting Matters Straight", (2004) 25 Journal of Private and Property Law, pg. 49.

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c. In a protracted case where the intricacies of the matter make it difficult to discern who is right or wrong in a case.[114]

d. Where the natural methods of finding out the truth were insufficient e.g. there were no witnesses (as in many witchcraft accusations);[115]

e. Where the witnesses fundamentally contradict each other;[116]

f. The members of the tribunal do not agree amongst themselves as to the facts of the case and there is no means of resolving the division of opinion;[117]

g. Where the contending parties before the arbitrators are too strong for the arbitrators to give a decision against one of them;[118]

h. Where the arbitrators are not satisfied as to the validity of the claims put forward by a complainant[119]

i. When human efforts fail or when no confidence is reposed on the human panel.[120]

The procedure for oath-taking in Igbo, according to M. M. green is that: "the two parties first produce tokens in lieu of their stakes and that these are given into the keeping of an elder…the accused then swears his innocence on an agbara of the accuser's choice. If within the appointed time – a year, or whatever is fixed as the limit within which the agbara is to act – the accused dies, the accuser gets his 5s back and the other 5s is divided among the people judging the case. If the accused does not die within the stipulated time by the oath formulae, he gets his money back together with half that of the accuser, the other half going to the people who judged."[121] The administration of the oath is by drinking concoction, touching, or crossing over the deity's insignia saying the necessary oath formulae such as:

"if I am the one that committed this crime for which I am accused, let the ofo kill me" or "if the testimony I gave in this case is to my knowledge false, let ofo kill me."[122]

The accused swears the oath to free or exonerate oneself from the accusations. In some instances, the accuser or complainant also swears with the formula such as "let the shrine, deity or ancestors, kill (me) if the accusation is malicious, false or wrong."[123] If the swearer is found culpable by mystical retribution or mysterious afflictions, there is room for him or her to send message of confession to the aka ji ofo (the priest)[124] in which case he/she may be sanctioned by the community through fine, ostracism or

[113] Ibid
[114] Okafor, (n. 14) pg. 72
[115] A. N, Allot "Evidence in African Customary Law" in E. Cotran, and N. N. Rubin, "Readings in African Law" (Africana Publishing Corporation, New York, 1970) pg. 87
[116] Ibid
[117] Ibid
[118] Gluckman, (n. 33) pg. 35
[119] Obi, (n. 25) pg. 28
[120] Oraegbunam (n. 22) pg. 70
[121] Green, (n. 5) pg. 127
[122] Ibid at 121; Okafor (n. 14) pg. 71
[123] Ele, (n. 111) pg. 38
[124] Ukaegbu, (n. 10) pg. 81

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exile.[125] But, if despite the signs, the swearer refuses to confess, he/she will suffer feces (mba mmuo), blindness, deafness, lame, madness or cursive death.[126] On the other hand, if the swearer does not die or suffer any affliction within the stipulated time by the oath formulae, he/she is declared innocent. This was usually followed by emotional celebrations by the party to mark his/her vindication by the gods.[127] In Igbo criminal justice system, oaths worked both as a means of decision and as a guarantee of veracity. As a guarantee of veracity, oaths were used as an appeal to supernatural forces to support the story told by a witness; it lends weight to his/her evidence and is an affirmation that he will speak the truth. With respect to oaths as a means of decision, once the accused swears the oath declaring his/her innocence, the trial/hearing ends.[128] In Igbo dispute resolution system, the parties do not testify on oath – they affirm their evidence on oath if called upon to do so.[129] In this connection, the use of oaths swearing displaces the need to weigh oral evidence of the parties and their witnesses.[130] The accused will be presumed innocent and his fate will be left for the supernatural tribune to decide. If no harm befalls him after a year or two he will be held acquitted by the supernatural tribune.[131] It is interesting to note that where a party was ordered to proffer a juju for the other party to take and he refuses, the other party will be adjudged the truthful party.[132] Simply put, therefore, refusal of a complainant to proffer a juju for the accused party to swear when requested, or refusal of the accused party to swear an oath when requested, will amount to the party in question losing his case because the case of the other party will be deemed to be true. This goes to show the pride of place which oath taking occupied in the traditional Igbo criminal justice system. In fact, according to F. U. Okafor, "even where there is substantial evidence and there are many witnesses to testify that the accused poisoned the deceased, the accused would be held innocent if he swears the oath."[133] This is confirmed in M. M. Green's account of how an accused insisted on resolving an allegation of stealing leveled against him, by supernatural means, despite that the allegation was supported by "circumstances which made it difficult to suspect someone else" other than the accused.[134] In this connection, it is humbly argued that even though oath-taking was believed to be effective in determining whether a suspect was guilty or not, it should not prevail over compelling direct or circumstantial evidence which irresistibly point to the guilt of the accused. In other words, if there is enough evidence showing that it was the accused who committed the alleged crime, then his oath of 'not guilty' is unnecessary and should not be held over and above the glaring evidence linking him to the crime. There are three ways for the prosecution to prove its case - direct evidence; by circumstantial evidence; or by confession. A confession is an admission made by a person charged with crime, stating or suggesting the inference that he committed that crime, and it is settled that a confessional statement, which is sufficient to ground a conviction, is the most effective compass of navigating culpability of an accused on the part he played in the

[125] Ele, (n. 111) pg. 38
[126] Ukaegbu, (n. 10) pg. 81
[127] Ele, (n. 111) pg. 39
[128] Evidence in African Customary Law (n. 115) pg. 87
[129] Obi, (n. 25) at pg. 28
[130] Oraegbunam,(n. 22) pg. 71
[131] Okafor, (n. 14) pg. 37
[132] Oraegbunam, (n. 22) pg. 71
[133] Okafor, (n. 14) pg. 37
[134] Green, (n. 5) pg. 125

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commission of the offense.[135] Direct evidence establishes a fact without making any inference to connect the evidence to the fact. In effect, direct evidence proves or disproves a fact directly. Circumstantial evidence, on the other hand, requires an inference to be made to establish a fact. Inference is a conclusion reached by considering other facts and deducing a logical consequence from them.[136] The Nigerian Supreme Court in the case of *Nasiru v. State*,[137] held as follows:

Circumstantial evidence is very often the best evidence. It is said to be evidence of surrounding circumstances, which by undesigned coincidence, is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say it is circumstantial. But the circumstantial evidence sufficient to support a conviction must be cogent, complete and unequivocal. It must be compelling and must lead to the irresistible conclusion that the accused, and no one else, is the offender. The facts must be incompatible with innocence of the accused and incapable of explanation upon any other reasonable hypotheses than that of his guilt.

Indeed, criminals will most likely assert their innocence even on oath. It is left for the judge to determine what the true position is, based on the facts and evidence available. Oaths of 'not guilty' should not override cogent, complete and unequivocal evidence of guilt in circumstances where the facts are incompatible with innocence of the accused and incapable of explanation upon any other reasonable hypotheses than that of his guilt. It is no wonder that in *Achiakpa v. Nduka*[138], the Supreme Court held that the justice of any case does warrant that it be determined not based on the swearing of juju oath but on the appraisal and evaluation of all the competing evidence adduced by the parties before the court. In *Iwuchukwu v. Anyanwu*[139], the Court of Appeal held that resolution of cases through juju swearing is a matter of the past. In *Nnadozie v. Mbagwu*[140], the Supreme Court per Oguntade J.S.C, held as follows:

"The trial Customary Court fell into the error of determining the ownership of the land in dispute by reference to an alleged decision made between the parties by the Chukwu oracle. There is no doubt that the practice of referring disputes to oracles was greatly followed in several parts of Eastern Nigeria. Social development which has greatly impacted on the law has resulted in the situation where such practice has fallen into disfavor and this has in turn led to its prohibition by law. The contemporary practice is that disputes should be resolved with reference to the evidence brought before a court by parties: not by reliance on the dictates of some oracles.[141]

In *Nwoke v Okere*,[142] the appellant and the respondent submitted their disagreement over ownership of a land to arbitrators. During the proceedings, the respondent was ordered by the arbitrators to swear an oath to a juju which was to be proffered by the Appellant. The Respondent swore to the juju and survived after one year. He therefore

[135] Obidiozo & Ors v. State (1987) LPELR-2170(SC), (1987) 4 NWLR (Pt. 67) 748; Solola v. State (2005) 11 NWLR (Pt.937) 460
[136] Lori v. State (1980) NSCC (Vol. 12) 26
[137] (2022) 4 NWLR (Pt. 1819) 165, at pages 195-196, paras G-H, A-B, respectively
[138] (2001) 14 NWLR (Pt. 734) 623
[139] (1993) 8 NWLR (Pt. 311) 307
[140] (2008) 3 NWLR (Pt. 1074) 363
[141] Ibid at page 389, paras. F-H
[142] (1994) 5 NWLR (Pt. 343) 160

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claimed ownership of the land but the Appellant did not accept the verdict. The dispute then was taken to court. The Court of Appeal held that the Respondent having been led to taking the oath on the "Ala Obibi" juju provided by the Appellant at great risk to their lives in the belief that that customary method would settle the dispute, the Appellant are estoppel by conduct to deny that the respondents were thereby adjudged owners of the land, the latter having survived the oath for over a year. The Appellant appealed to the Supreme Court which resolved the appeal in favor of the Respondent based on other evidence rather than the juju oath. In fact, the Supreme Court specifically derided the juju oath method of resolving dispute:

"Both sides in the contested suit called as their witnesses natural and real human beings to say what they knew about the land. All the witnesses were available for cross-examination and re-examination on their testimonies. This was as it should have been under the law. The 'juju' method as cheap and quick as it might appear to have had its own disadvantages. For example, you cannot put a 'juju' in the witness box for any purpose. Its activities, methods and procedure would appear to belong to the realm of the unknown even though the effects may be real in the end. The worst of it all is that a 'juju' 'judgment' or 'decision' is not subject to an appeal like the one we are all witnessing now in this suit. So that unless and until the 'juju' descends to the level on which we can all understand its workings, it would be difficult to enforce its 'decision' in a law court. We have come a long way from the oracle!"[143]

From the above, it is clear that juju swearing, or oath-taking is now out of favour in modern courts as a means of resolving disputes. However, it is submitted that people's way of life and belief system should not be discountenanced or treated as old-fashioned merely because one does not seem to find a basis for such belief. There are cases where the courts recognized oath-taking. In *Odunze v. Nwosu*[144], the Supreme Court recognized oath-taking as a traditional means of resolving disputes. In fact, in a more recent case of *Umeadi v. Chibunze*,[145] the Supreme Court, per Mary Peter-Odili (JSC) held that oath-taking is a valid process under customary law arbitration, and it is one of the methods known to customary law for establishing the truth of a matter. It is submitted that this decision, being the latest in time, is thus the extant position of the law on the validity of oath-taking as a means of resolving disputes. The preference of oath-taking over evidence from witnesses, amongst the Igbos seems to be justified by three major factors. The first is that oath-taking worked effectively for them. Secondly, perjury or swearing falsely is believed to attract grave punishments for the perjurer and even upon the perjurer's family.[146] This is why the Igbos say: *"onye na-emeghi ihe iyi, anaghi atu egbe igwe egwu"* (one who did not offend an oath does not fear thunder).[147] Thirdly, human beings are prone to error in their thoughts and judgments so that despite overwhelming testimonies from witnesses indicting a suspect for a crime, it may still

[143] Per KUTIGI, J.S.C at page 173, paras. A-B
[144] (2007) 13 NWLR (Pt. 1050) 1
[145] (2020) 10 NWLR (Pt. 1733) 405 at 445
[146] Alexander Anichie, "Traditional Conflict Resolution in Igboland as an Approach for Rural Development" (2008) Vol 7, No. 1, pg. 70 (pp. 61-72)
[147] Ekei, (n. 6) pg. 219

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not be out of place to have recourse to oath taking which is, in essence, divine justice – the "absolute, pure and final justice"[148]

(d) Trial by Ordeal: Quite like oath taking, trial by ordeal is a form of proof system in traditional Igbo society designed to verify criminal accusation. It is a primitive form of trial in which an accused was subjected to a dangerous or painful physical test, the result being considered a divine revelation of the person's guilt or innocence. The participants believed that God would reveal a person's culpability by protecting an innocent person from the torture.[149] According to Robert Bartlett, trial by ordeal was a device for dealing with situations in which certain knowledge was impossible but uncertainty was intolerable.[150] The methods of trial by ordeal varied in different communities. In some Igbo communities, (e.g. Nsukka, Enugu State) certain concoctions were prepared and given to an accused person to drink. If the accused person developed signs of allergy to the concoction, it was assumed that he/she had a case to answer. But, where the accused person failed to show any sign of being allergic to the concoction, it will imply that the accused person was innocent of the criminal allegation leveled against him or her. In some other places, accused persons were made to inhale herbal smoke which usually produced the same effect like in the case of the concoction. Trial by ordeal was used in settling criminal accusations, from minor cases of stealing firewood to more serious cases such as murder.[151] Trial by ordeal is usually resorted to in cases where a woman is suspected to have a hand in the death of her husband. The personal experience of an Igbo widow, Cecilia Akuego-Onwu, following the death of her husband, captures this point:

> I was forced to sit near the corpse of my husband till daybreak. They (his relatives) put a kolanut on his chest and forced me to eat it. They made it compulsory that I must eat without washing my hands or clearing my teeth for seven-market days, equivalent to one calendar month. On every market day, about three o'clock in the morning, they sent an old widow to escort me with a lamp to a nearby river to take a bath. This according to them meant that if I killed my husband, he would come out of the river and avenge his death.[152]

In her research on the impact of Igbo customs on Widows, T. A. Ezeobi confirms the existence of the above ordeals in Igboland and adds other ordeals such as compelling the widow to drink a cup of water with which the body of her dead husband has been washed, compelling her to go out naked to some stream to take bath in the dead of the night, and thereafter go through some rituals including sexual intercourse with a pre-arranged waiting man before returning to her home.[153] A learned scholar explains that the goal of the above ordeals is that if the widow was privy to the death of the husband, then in respective cases, the dead husband would use the knife or the stick to kill the widow, or the widow would die from the eating of the kolanut, or from any of the

[148] Okafor, (n. 14) pg. 40
[149] B. A. Garner, Black's Law Dictionary (USA: West Publishing Co, 2004) pg. 1205
[150] Robert *Bartlett, Trial* by *Fire* and *Water*: The *Medieval Judicial Ordeal* (*Oxford*: *Clarendon Press, 1986*) pg. 33
[151] Igbo and Ugwuoke, (n. 46) pg. 165
[152] See M. O, Ogungbe, "Family in Disarray: Law to the Rescue" (2009, Olabansi Onabanjo University, Ogun State, Nigeria) pg. 37
[153] Theodore A. Ezeobi, "Widowhood, Igbo Custom and The Law" in Laz E. N. Ekwueme, "Perspectives on Ndi-Igbo in Contemporary Nigeria" (LENAUS Publishing Ltd, Yaba, Lagos, 2000) pg. 95 (pp. 93-102)

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tortures or treatments.[154] Robert Bartlett argues that trial by ordeal was intended to reveal a specific fact, and designed to deal with specific allegations when other evidence or proof was lacking. The scholar further argues that in trial by ordeal, judicial function was diluted by the belief that God might be using the ordeal to show mercy, justify the good at heart, or punish the sinner regardless of whether he happened to be guilty in the case at issue."[155] From this perspective, two possibilities can be gleaned as regards trial by ordeal: (1) a person may in actual fact have committed the crime in question but God decides to show him mercy by saving him from death; (2) a person in actual fact may not have committed the alleged offense but God decides to punish him for his other bad deeds. While it is true that these possibilities in effect dilute judicial function, the question is whether judicial function should be diluted? Elizabeth Kamala argues that trial by ordeal might have been designed to provide some measure of mercy to accused individuals known or very strongly suspected to be guilty, allowing them to purge themselves and be judged innocent as a consequence.[156] From a strict legal perspective, while this is not totally wrong, it can create confusion and distrust in the ordeal justice system. This has been exemplified in the Medieval English trial by ordeal. In Medieval England, trial by ordeal involved a period of fasting and prayer by the accused; a special liturgy celebrated by a priest who would bless and heat the iron; the swearing of a solemn oath by the accused, who would then carry the hot iron a prescribed number of paces; occlusion of the burned hand, most likely for a period of three days; followed by the unveiling of the hand and examination for signs of healing or putrefaction, leading to the pronouncement of judgment and, if convicted, sentence. When the accused person's hand was uncovered later, he was pronounced guilty if discharge was discovered, demonstrating the hand's unclean state of healing; if otherwise, an acquittal followed, and God was glorified and praised.[157] One of the incidents that brought skepticism to this procedure was the case where a woman who was accused of murder the punishment of which was death by burning. She passed through the above stages of the ordeal and was pronounced guilty when it was discovered that she still had a blistered hand. However, shortly after the pronouncement of guilt by the knights, the woman's hand got healed by a saint. The justices directed the knights to re-examine the woman's hand. Upon confirming the healing, the conviction was then overturned even though the knights maintained that their earlier verdict of guilt was not erroneous.[158] The question to ask is whether, by allowing the accused person's hand to be healed after a finding of guilt has been made, the supernatural tribune can be said to have overruled itself in the trial by ordeal? In the same vein, since in the Igbo trial by ordeal, the accused person's fate is left for the gods to determine, what happens where the accused due to the trial by ordeal, begins to suffer the 'mystical retributions and afflictions' which are believed to be the signs of guilt, but later recovers from the afflictions? Does this imply that the gods found the accused guilty but pardoned him? Judicial function in a criminal trial is geared towards

[154] Oraegbunam, (n. 22) pg. 73
[155] Robert Bartlett, (n. 150) pg. 79
[156] Elizabeth Papp Kamala, "Felony and Guilty Mind in Medieval England" (2019, Cambridge University Press, United Kingdom) pg. 33 (hereinafter referred to as Felony and Guilty Mind in Medieval England)
[157] Elizabeth Papp Kamal, "Trial by Ordeal By Jury In Medieval England, Or Saints And Sinners In Literature And Law" in Kate Gilbert and Stephen D. White, eds., "Emotion, Violence, Vengeance and Law in the Middle Ages: Essays in Honour of William Ian Miller (Leiden: Brill, 2018), pg. 9 (hereinafter referred to as Trial By Ordeal By Jury In Medieval England, Or Saints And Sinners In Literature And Law)
[158] Ibid pg. 11

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ascertaining whether the accused committed the offense with which he/she was charged, and to discharge and acquit or convict and pronounce punishment depending on the findings of the court. A judge cannot discharge and acquit an accused when the judge had made a finding of guilt. In offenses involving a mandatory sentence, the judge has no power to reduce the sentence. For instance, in traditional Igbo criminal justice system, the mandatory penalty for murder is generally death sentence.[159] If the supernatural tribune makes a finding of guilt against an accused person by sending afflictions to him but later heals the accused person, then it stands to reason that the gods exceeded judicial function and exercised the executive function of prerogative of mercy which modern courts do not have power to exercise. In this connection, it is immaterial that the offender wriggled out of his afflictions (punishments) by offering ritual sacrifice (ikpu aru/ichu aja) to the supernatural tribune.[160]

Legal Analysis of Igbo Criminal Justice Practices

Igba afa' (Divination)

According to W. G. Oxtoby, divination refers to "the search for information about the causes of present conditions or about what to expect in the future."[161] Another scholar defines divination as the means through which the diviners seek to interpret the mysteries of life, give guidance in daily affairs and settle disputes to uncover the past and look into the future."[162] Divination is one of the Igbo criminal justice practices resorted to in cases where there is doubt as to the identity of the perpetrator of a crime or where the facts of a case are not clear.[163] There appears to be two major circumstances in Igbo traditional society where divination was resorted to in resolving criminal cases. The first is when a person, family or community is faced with a mysterious hardship or repeated misfortune (such as barrenness, ogbanje (changeling), death, illness, etc) which is believed to be due to a serious offense against the gods but no one knows the exact offense that was committed or who committed it.[164] In such cases, the dibia afa or okwa ajuju (diviner) is consulted and he reveals answers to the pertinent questions as well as the appropriate remedy for it.[165] In this way, the diviner's interpretation of an omen is like rendering a legal verdict.[166] The process of interpretation was not merely a means of explaining or justifying divine judgment, but also a potent illocutionary ritual for pronouncing it. The second case is where the people are aware of the offence that was committed but do not know who the offender is (e.g., where the body of a victim of murder is found but the murderer is unknown). In such cases, the council of elders could submit suspects to the diviner, who will reveal to them the actual offender. Based on the findings of the diviner, the elders would then deal with the offender accordingly.[167]

However, one major issue that needs to be critically analyzed is as to how the diviner arrives at his conclusion of guilt or innocence of a suspect. According to Fabian Ukaegbu, the

[159] Okafor (n.14) pg. 36
[160] Ibid pg. 42
[161] W. G. Oxtoby, "World Religion, Eastern Traditions"2nd Edition (Oxford University Press, 2002) pg. 331
[162] E. G. Parinder, "West African Traditional Religion" (Epworth Press, London, 1949) pg. 137
[163] See Elizabeth Isichei, "A History of the Igbo People" (The Macmillan Press Ltd, New York, 1976) pg. 24
[164] Green (n. 5) at pg. 101
[165] Obi, (n. 25) pg. 25
[166] Lindsay G. Driediger-Murphy and Esther Eidinow, "Ancient Divination And Experience" (Oxford University Press, Oxford, UK, 2019) Pg. 27
[167] See Onyeozili and Ebbe, (n. 95) pg. 37

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diviner does so by "inquiring into a matter through inquisitorial (procedure) and consultation."[168] In the same vein, Emmanuel Onyeozili and Obi Ebe argue that the diviner arrives at his conclusion through incantations or sometimes through trial by ordeal.[169] There are two basic types of divinatory system common in Igboland, namely: mechanical system and invocatory/incantational system."[170] The mechanical system was an explanatory device involving the use of special objects. Basden G. T had identified some of these objects to include human and animal teeth, cowries, seeds, coins, pieces of bones, and seeds of certain plants."[171] Arguably, these objects played a function that is not conceptually dissimilar to that of law in that they are conferred legitimacy upon a decision making process.[172] The general procedure was that, at the beginning of the divination, the diviner dropped these objects on the floor. He picked them up and repeated the throwing, one or several times and then gave his verdict.[173] Simply put, therefore, the mechanical system of divination involves the manipulation of sacred objects by the diviner in order to arrive at a verdict. This is different from the invocatory or incantational system which involved a series of passionate calls by the diviner upon either the deity or ancestors.[174] The diviner's task in invocational system, therefore, is that of "addressing the gods and asking them to produce a verdict in the case under discussion."[175] In this connection, divination is a tool that enables the production of divine judgments and provides a framework in which divine law is set out.[176] In any case, the conceptual premises of divination (whether mechanical or invocational) are clear: by delegating the solution of a legal controversy to a divinatory procedure, divine support is sought and the outcome of the process is fully legitimized.[177] Emmanuel U.M. Igbo and Cyril O. Ugwuoke confirmed this among the Igbos when they submitted as follows:

"…the methods applied by diviners in their services varied from person to person, and from place to place…a diviner could unearth a criminal at large, give clue to the recovery of missing goods, and establish the innocence or the guilt of the accused persons and his verdicts were usually accepted by the people.[178]

However, one of the criticisms against divination is that it was an operation naturally fraught with apprehension since it placed incredible pressure upon the diviner to interpret the divine word correctly. The external pressures came from competition for ritual authority, economic hardship, a constant need to produce accurate results, and the ever-present presumption of possible impropriety. The internal insecurity derived from a theological worldview in which coincidence is impossible and an inherent pressure exists of rendering divine signs into their juridical cuneiform embodiments with consistent accuracy.[179] Be that as it may, divination is a tested and foolproof method of crime detection. Although no scientific or empirical proof

[168] Ukaegbu, (n. 10) pg. 84
[169] Onyeozili and Ebbe, (n. 95) pg. 37
[170] A. A. Onukwube, "Afa" (Divination): The Mouthpiece of The Unseen" being A Dissertation Submitted to the Department of African and Asian Studies Nnamdi Azikiwe University, Awka, in Partial Fulfillment of the Requirement For the Award of Doctor of Philosophy, Ph.D., September 2008, pg. 20.
[171] Williamson, K. (1972). Igbo English Dictionary based on the Onitsha Dialect. Benin: Ethiope pg. 4-5
[172] Olga Tellegen-Couperus, "Law and Religion in the Roman Republic" (BRILL NV, Leiden, Netherlands, 2012) pg. 32-33
[173] A. A. Onukwube (n. 170) at p. 50; see also G. T. Basden, "Niger Ibos" (Frank Kass & Co. Ltd, Milton Park, Abingdon, Oxon, 1966) pg. 51
[174] Ezenwoko and Osagie, (n. 49) pg. 155
[175] Olga Tellegen-Couperus, (n. 172) pg. 34
[176] Ibid pg. 35
[177] Ibid pg. 34
[178] Igbo and Ugwuoke, (n. 46) pg. 165
[179] Lindsay and Esther (n. 166) pg. 28

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can be provided – and the diviner has not claimed to be scientific but spiritual – inquiries of this nature have generally been found to have authentic results.[180]

Igba ndu' (Covenant Making)

Just like inu iyi (oath taking), igba ndu (covenant making) is an important Igbo conflict resolution strategy which has both preventive potency and reconciliatory values.[181] The concept of igba ndu is drawn from the word "ogbigbandu" which means "a covenant". Chioma Ayozie defines the concept as "an agreement between individuals or groups…a bind of life that exists between two or more people or a group of persons in Igboland."[182] F. U. Okafor defines Igbandu as "a formal oath for re-establishing confidence, in which one may drink the blood of the other."[183] Thus, igba ndu is not just a mere agreement as it involves oath-taking and is usually sealed with the blood of the parties to the dispute.[184] Any party who violates the terms of the covenant will be punished by the gods.[185] Igbandu can be used at the beginning or closing stage of the dispute resolution process but the purpose in both cases is to build or rebuild trust and security between the parties.[186] With respect to Igba ndu at the preliminary stage of crime resolution, it is resorted to where one of the parties is afraid of the other party or where there is a reasonable tendency that one of the parties might harm the other while the case is being resolved.[187] In this connection, igba ndu is a very important aspect of Igbo criminal justice administration. In our modern criminal justice system, one of the grounds upon which an accused person may be denied bail is for the protection and safety of the accused person (that is, where he may be killed by the complainant or the victim's family or angry mob if he is released), or where there is a possibility that the accused will harm or interfere with the complainants or key witnesses in the case. In *Abacha v State*,[188] for instance, one of the grounds upon which the application for bail was opposed was that the witnesses in the case were already receiving death threats from different sources that related to the accused persons. Similarly, in the case of *Bamaiyi v State*,[189] one of the key witnesses against the accused was shot dead by assassins. Therefore, the fears and concerns underpinning the practice of igba ndu in Igbo criminal justice system cannot be dismissed with a wave of hand. In this connection, igba ndu is akin to the practice of peace bonds applicable in the Canadian criminal justice system. In Canada, a peace bond is a protection order made by a court under section 810 of the Canadian Criminal Code. It is used where the defendant appears likely to commit a criminal offence in which case the court may upon application of the complainant impose specific conditions that are designed to prevent the defendant from committing harm to the applicant or the applicant's spouse, child, or from committing damage to their property. When the court accepts the application for the peace bond, the defendant must obey the conditions of the peace bond or else he or she may face

[180] **Emiola (n. 9) at pg. 42; Green (n. 5) at pg. 131**
[181] Ele, (n. 111) pg. 36
[182] Chioma Rosemary Ayozie, "Igbandu as a Traditional Method of Conflict Resolution in Igbo Land" (2018) Vol. 5 No. 1 Igboscholars International Journal, pg. 4
[183] Okafor (n. 14) pg. 31
[184] Ezenwoko & Osagie, (n. 49) pg. 142
[185] Ajayi, (n. 124) pg. 146
[186] **Chioma Rosemary Ayozie, (n. 182) pg. 4**
[187] F. C, Ogbalu, "Omenala Igbo" (University Publishing Company, 11 Central School Rd. Onitsha, Nigeria, 2006) pg. 64
[188] (2002) 5 NWLR (Pt. 761) 638
[189] (2001) 8 NWLR (Pt. 715) 270

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criminal charges.[190] Igba ndu is also used after a criminal dispute has been resolved. This can be gleaned from the following account by F. A. Ezenwoko and J. I Osagie:

After the resolution, the two villages took a common oath of friendship and non-aggression. As a sign of the restoration of peace, the villages presented kolanuts, palm wine and alligator pepper to the elders. Among the Igbo kolanut is regarded as a symbol of life. An Igbo adage has it that, "*onye wetere, oji, wetere ndu*"- "he, who brings kola nut, brings life." The kolanuts were mixed with the blood extracted from the elders of the villages involved while prayers for unity, oneness, mutual help, cooperation and peace were said. After the prayers, the kola nuts were broken, served and eaten to seal the oaths which bound them together.[191]

The igba ndu serves as a perpetual injunction which is binding on both parties and their descendants, the breach of which will attract sanctions from the gods. This is unlike our modern criminal justice system where the criminal courts seldom grant perpetual injunctions.[192]

'Ikpu aru' (Purification)

Ikpu aru refers to a traditional purification rite or expiatory sacrifice in Igboland which serves as a ransom to reconcile and redeem the offender and offer him protection of the spiritual being.[193] It is usually invoked when dealing with offenses that are nsoala (i.e offenses against the gods). On the essence of purification in Igboland, F. U. Okafor states as follows:

"One nso behavior pollutes the entire land and temporarily the spiritual communion with the ancestors are suspended because of the abomination. To restore the spiritual harmony with ancestors, a ritual purification is needed. Otherwise, the entire community may share in the punishment the ancestors may send."[194]

In his extensive research work on purification in Igboland, Jude C. Aguwa divides the offenses that will necessitate purification into two types – minor pollution and major pollution.[195] The minor offences/pollutions include: having sex in the bush or with a menstruating woman; eating food prepared by a menstruating woman; striking one's father; burying a woman with a child in the womb.[196] The purification rite for this category of offenses is less rigorous. It involved the sacrifice of fowls and short invocatory prayers such as *"Elu n'ala gbaharanu ya, omekwala unu*" (sky and earth let him be free, he has appeased you) or *"Ma obu muo ma obu madu ka omejoro leenu ihe unu choro, gbaya n'ahu*" (whether it is spirit or man that is offended, here is the sacrifice, take it and let him free).[197]

On the other hand, major pollutions/offences include suicide; murder of a kinsman; incest; stealing yams in the farm; cutting yam tendrils; killing of totem animals; sexual relations

[190] See Boris Bytenski "Peace Bonds in Ontario: What You Should Know" available at https://crimlawcanada.com/peace-bonds-in-ontario/ accessed on April 24, 2022
[191] Ezenwoko & Osagie, (n. 49) pg. 142
[192] David Feldman, "Injunctions and the Criminal Law" (1979) Volume 42 No. 4, Modern Law Review, pg. 371 (pp. 368-388)
[193] Ikenna L. Umeanolue, "An Evaluation of Ikpu Alu in Igboland in the light of the Old Testament" (2019) Vol. 4(2), Preorcjah pg. 93 (pp. 89-109)
[194] Okafor, (n. 14) pg. 65
[195] Aguwa, (n. 1) pg.541
[196] Ibid
[197] Ibid at pg. 543

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while mourning one's husband, etc. There are three types of purification rites for dealing with this type of offense. The first type is sacrifice of expiation. In a chosen spot, a hole is made in the earth into which are poured the blood of slaughtered animals such as fowl, goat, or sheep. During these actions, prayerful addresses are made to ala such as "Ala gi kpe oku kpe chuchuchu: gi juo oyi juo gborii" (Ala, if you are hot in anger, take it easy: simmer down and simmer down indeed). The second type of purification is referred to as symbols removal. It involves packing into a basket a particular ritual item which the offender provides according to prescription. The items which include abo azi (basket of flies), abo ndanda (basket of ants), akwa udele (vulture's eggs) etc, symbolize the pollution and they are eventually deposited in designated spots on a road outside the town or in the evil forest.[198] The third type is the employment of a scapegoat. This applied when the offense threatens the entire community. In more ancient times, a human scapegoat was more in use, but this has been replaced by the use of animals especially *aturu anya npi* (blind sheep).

Another type of purification rites can be gleaned from Chinua Achebe's *Things Fall Apart*. Following the ostracism of Okonkwo and his family, a large crowd of men stormed his compound and set his houses on fire, demolished his red walls, killed his animals, and destroyed his barn. In justification of their actions, the author stated as follows:

"it was the justice of the earth goddess and they were merely her messengers…they were merely cleansing the land which Okonkwo had polluted with the blood of a clansman…if the clan did not exact punishment for an offense against the great goddess, her wrath was loosed on all the land and not just the offender"[199]

Apart from the need to protect the community from the wrath of the gods, the heart and core of these rituals is an appeal by the person affected by an evil omen to the divine judicial court, in order to effect a revision of the fate of the individual, announced by a sinister omen. The metaphor of the court of law promotes the presentation of the omen as a communicative sign sent by an angry god whom the ritual serves to appease.[200] According to A. G. Karibi-Whyte, expiation is the sanction for all offenses against the departed ancestors, sacred objects and idols.[201] However, it is apposite to emphasize that the purification rites do not replace the legal punishment which the offender deserves.[202] Simply put, in resolving crimes that are *nsoala*, legal punishment and purification rites are mutually inclusive. By parity of logical reasoning, a person can only undergo the rites if a finding of guilt has been made against him. That is to say that despite legal punishment or the pronouncement thereof, the offender is still considered to be in a state of ritual danger for which purification is necessary.[203] Therefore, it appears that where the offender is convicted and punished according to law, but the purification rites were not observed, the resolution of the offense was inchoate. It is arguable that the inchoateness should affect only the spiritual aspect and not the legal aspect of the case. This is more so because the rites do not assist the court in performing its judicial duty of ascertaining whether the accused is guilty or innocent. However, to the extent that these rites are geared towards the restoration and reintegration of the accused, they arguably form part

[198] Ibid pg. 544-545
[199] Achebe, (n. 72) pg. 87
[200] Amar Annus, "Divination and Interpretation of Signs in Ancient World" (University of Chicago, Illinois, USA, 2010) pg. 3
[201] Criminal Policy: Traditional and Modern Trends (n. 13) pg. 40
[202] Green, (n. 5) pg. 100
[203] Ekei, ((n. 6) pp. 219, 225

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of the criminal justice system. Furthermore, in Igbo traditional justice system, religion is a fundamental aspect of the law so that the spiritual element of certain crimes cannot be dismissed with a wave of the hand.

Criticisms of Igbo Criminal Justice Practices

The pre-colonial Igbo criminal system is not without some criticisms. These criticisms shall be discussed below:

1. It has been argued that the traditional African methods of determining criminal responsibility (such as divination, trial by ordeal) cannot be employed to ascertain whether the accused person's conduct was intentional, reckless, or negligent or whether the person was acting under a mistake. According to A. G. Karibi-Whyte, it is therefore "illusory" to rely on those methods.[204] Considerable research has shown that African law often defines the notion of liability in many situations within the context of specific social relationships of the parties concerned.[205] The pattern of these relationships, particularly between groups, may be long established, and determine the nature of criminal responsibility (or intention), as well as compelling acceptance of liability. Thus, where two groups are at feud, an injury may be assumed to be deliberate when in fact it is not.[206] However, it is submitted that the Igbo criminal justice system distinguished between intentional and unintentional acts. Where it was clear from the circumstances that the offensive act was inadvertent, there was no basis for oath taking or trial by ordeal. These methods were only invoked where the accused had completely denied the offense. This is different from where the accused admitted that he committed the act but added that he did so inadvertently. In the Igbo society, falsehood or twisting the truth raises a presumption of guilt. Thus, where a person accidentally kills another person but goes ahead to completely deny the act thereby necessitating oath-taking or trial by ordeal, he is deemed to have submitted his fate to the supernatural tribune and his perjurious dishonesty may be an aggravating factor.

2. It has also been argued that the courts usually relied on metaphysical findings without doing a stitch of rational thinking. The reliance on metaphysical findings is contended to be irrational because it does not allow for the development of substantive law and does not ascertain facts to which substantive law could be applied.[207] However, it is humbly submitted that it is not true that the courts did not do a stitch of rational thinking. For instance, as discussed in this work, it is not in all cases that oath-taking is adopted. Some cases were resolved by the elders without recourse to oath-taking or trial by ordeal. The so-called metaphysical method was usually invoked as a matter of last resort in protracted cases where the intricacies of the matter made it difficult to discern who was right or wrong.

3. Another criticism of Igbo customary practices is in terms of repulsiveness to the notion of human rights. For instance, in the case of *Nwarata v. Egboka*[208], the Court of Appeal declared that trial by ordeal is intolerable and condemnable in Nigeria.[209] The same

[204] History and Sources of Nigerian Criminal Law (n. 27) pg. 122
[205] Gluckman, (n. 33) pg. 69
[206] Ibid
[207] Robert C. Palmer, "Trial by Ordeal" (1989) Volume 87, Issue 6, Michigan Law Review, pg. 1555. (pp. 1547 – 1556)
[208] (2005) 10 NWLR (Pt. 933) 241
[209] Trial by ordeal has been outlawed by section 207 (1) of the Nigerian Criminal Code

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goes for the practice of killing twins. In Igbo traditional society, it was an offense to give birth to twins. The purification rite for the offense involved the elimination of the offending material (i.e the killing of the twins).[210] This practice did not only violate the right to life of the twins but also the right to human dignity of Igbo women.[211]

4. The use of oath-taking has been criticized as being a major cause of the retardation of the development of a sound technique of evidence in trying a case.[212]

5. The fact that the local judges are often involved in a complex or multi-complex relationship with the parties outside the court-forum can lead to the dominance of emotion over logic in the adjudication of disputes submitted to them. According to J. F. Holleman, this dominance of emotion over logic affects the predictability of the quantum of compensation payable to the winning party in cases requiring compensation.[213] A good example can be seen in the use of a young virgin and a young boy (i.e two lives) as compensation for the murder of a woman (one life) in Achebe's "Things Fall Apart." This compensation may be argued to be unequal. There are also cases where the compensation was inadequate. This can be gleaned from M. M. Green's account of what an accused got after he survived an oath. Before the oath, both the accuser and the accused submitted a token of five shillings each to the judges. The rule was that whoever emerged victorious received back his/her five shillings and was further compensated with half of the shillings staked by the other party.[214] So where the accused survived the oath, all that he got as compensation for the 'wrongful' prosecution was half of the sum staked by the accuser and nothing more.

6. The use of human sacrifices for expiation is repugnant to natural justice, equity and good conscience. The barbarity of human sacrifice in Igbo criminal justice was captured by Chinua Achebe's account of how a young boy (Ikemefuna) was given to the Umuofia community as compensation for a murder perpetrated by a member of his community (Mbaino). Not only was the boy subjected to slavery in Umuofia, but he was also later slaughtered in expiation of the murder.[215] Our jurisprudence is awash with judicial authorities which prohibit and discourage customs that support human sacrifice.[216]

7. Similarly, pro-animal rights scholars have argued against the use of animals for purification rites.[217] Section 495 of the Nigerian Criminal Code criminalizes the deliberate causing of unnecessary suffering to animals.[218] Although this legislation does not contain any specific mandates on the use of animals for purification rites, it criminalizes acts such as "cruelly beating, kicking, ill-treating, overloading, torturing, terrifying, etc any animal.[219] It is a criminal offence to subject an animal to any

[210] Aguwa, (n. 1) pg. 541
[211] See Ukaegbu (n. 10) pg. 149
[212] Green, (n. 5) pg. 130
[213] J. F. Holleman, "Issues in African Law" (Mouton & Co publishers, Netherlands, 1974) pg. 14
[214] Green, (n. 5) pg. 128
[215] Achebe, (n. 72) pp. 8, 40
[216] Aku v Aneku (1991) 8 NWLR (Pt. 209) 280; Ashogbon v. Oduntan (1935) 12 N.L.R. 7; Rufai v. Igbirra Native Authority (1957) NRNLR 178
[217] Danielle N. Boaz, "The "Abhorrent" Practice of Animal Sacrifice and Religious Discrimination in the Global South" (2019) Vol. 10 Religions, pg. 3 (pp. 1-20)
[218] Criminal Code, s. 495 (1) (b)
[219] Criminal Code, s. 495 (1) (a)

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operation "performed without due care and humanity", or as the owner, to permit such an operation.[220] Although the Criminal Code exempts the destruction of an animal as "food for mankind" the destruction must not be accompanied by the infliction of "unnecessary suffering."[221] Considering how animals are treated during expiation rituals, it is argued that the Criminal Code has some application to purification rites. However, the reference to "unnecessary suffering" may provide the ability for those carrying out some purification rites to argue that they are "necessary." In this sense, the rites are necessary for the exercise of the right to religious freedom.[222] Whilst the religious sacrifice of animals constitutes a form of manifestation of religious freedom, to what extent can such practice be restricted due to the protection of animals? It would be useful therefore to have detailed rules and guidelines on the use of animals in purification rites. Besides, the right to religious freedom is not absolute. It is subject to public safety, public order, public morality or public health.[223]

Characteristics of the Igbo Criminal Justice System

Notwithstanding the above criticisms, it is submitted that the Igbo criminal justice system is characterized by speedy dispensation of justice; voluntary submission/participation; social harmony; informality; social pressure; and strong religious beliefs.

1. Speedy dispensation of justice: Trial/hearing in Igbo criminal justice procedure was free of endless adjournments. It was done openly with all the parties and the witnesses hearing each other unlike the Western system of ordering witnesses out of court and out of hearing. The argument that justice was speedy may seem to require justification considering that the procedure ensured that no person's opinion would go unregarded and every fact that might have a bearing on the successful conclusion of the case was not overlooked. But no one contemplating modern criminal litigation in West Africa, with its interminable appeals dragging on from court to court, could argue that Igbo criminal justice was slow in comparison.[224] Furthermore, justice was speedily dispensed since in most cases offenders admitted their guilt due to fear of the gods.

2. Trial in the Igbo traditional society was generally economical. According to B. Umeogu, "there was an economy of money, time and mental stress associated with endless proceedings."[225] However, while the economy of money and time may not be disputed, the economy of mental stress may require some justification. This is because mental stress is not caused only by endless proceedings. For instance, it is arguable that the proceedings involving oath-taking and trial by ordeal can as well cause mental stress to the parties and witnesses.

3. Voluntary Submission: There was often a voluntary submission/participation by the parties to the dispute resolution procedure.[226] The voluntary participation was due to the

[220] Criminal Code, s 495 (1) (e)
[221] Criminal Code, s 495 (3)
[222] Bredan White, "Sacrificial Rights: The Conflict Between Free Exercise of Religion and Animal Rights" (1994) Volume 9, Issue 2, St John's Journal of Legal Commentary, pg. 855 (pp. 835-855)
[223] CFRN, s 45
[224] See Hilda Kuper and Leo Kuper "African Law: Adaptation and Development" (University of California Press, Los Angeles, California, USA, 1965) pg. 232
[225] Bonachristus Umeogu, "Igbo African Legal and Justice System: A Philosophical Analysis" (2012) Vol.2, No.2, Open Journal of Philosophy pg. 121 (pp. 116-122)
[226] Essays in African Law (n. 74) pg. 120

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Igbo people's firm belief in their traditional criminal justice system and the desire for social order and justice.[227]

4. Social Pressure: The Igbo criminal justice system relied on social pressure to ensure compliance with established norms and court decisions.[228]

5. Simplicity and lack of formality: The factors that sustained this informality include that parties were normally involved in complex or multiplex relations outside the court-forum, relations which existed before and continue after the actual appearance in court; and the traditional courts adopted a commonsense approach as opposed to legalistic approach to problem-solving.[229] This informality of procedure is reflected in the mode in which litigants present their cases, in the manner of obtaining evidence, and in the role played by the court (i.e inquisitorial).

6. Social Harmony: The Igbo criminal justice system was based on restorative rather than retributive justice. At the heart of the traditional Igbo criminal adjudication was the notion of reconciliation or the restoration of harmony. Beyond making findings of facts, stating the rules of law, and applying them to the facts, the job of a traditional Igbo court is to set right a wrong in such a way as to restore harmony within the disturbed community.[230]

7. Strong religious beliefs: In Igbo criminal justice system, religion and ritual beliefs and practices occupied a pride of place.[231] This reflects in their perspective to crime as well as the procedures involved in resolving criminal cases. For instance, the Igbos believe in the ever-presence of the ancestors; that the commission of serious offences such as murder, incest ruptures the status quo and can invoke the wrath of the earth god (ala) on both the offender and the whole community. It is no wonder therefore that where such offenses are committed, a comprehensive administration of justice would require that ritual purifications be made to appease the earth goddess and to restore both the offender and the status quo that existed before the offense

CONCLUSION

This research considered the criminal justice perspective of the Igbos of the Southeast, Nigeria as revealed in their customs which include traditional practices, procedures relating to the resolution of criminal disputes. Although some of these customs are still being observed in some local communities today, the Igbos are gradually forgetting their customs and traditions. This is worsened by sections 36(4) and (12) of the Nigerian Constitution which respectively vests criminal jurisdiction in modern courts of law (thus robbing traditional judges of their customary judicial powers) and abolished unwritten customary

[227] I. U. Nwankwo, "Traditional Multiple Level Conflict Resolution and Appeal Systems of the Igbo Group of Southeast Nigeria and the Challenges of Social Change" 2018, Vol. 6 (11) American Journal of Research Communication, pg. 45 (pp. 30-50)
[228] Obi, (n. 25) pg. 17
[229] Gluckman, (n. 33) pg. 23
[230] See Richard Bowd, "Status Quo or Traditional Resurgence: What is best for Africa's Criminal Justice Systems? Pg. 49 (pp. 35-55) in "The Theory and Practice of Criminal Justice in Africa" Monograph 161, June 2009, African Human Security Initiative
[231] Gluckman, (n. 33) pg. 22

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criminal law. In Southeast of Nigeria today, crimes have continued to increase despite the existing western judicial structures. “Unknown gun men” continue to kill, rape, maim and assault innocent indigenes to the utmost helplessness of the government. Innocent people are falsely accused and taken to a far distant State where they are incarcerated without formal trial. Serious crimes which under the Igbo custom would ordinarily necessitate the performance of purification rites are now being perpetrated with impunity and no expiation is made in their respect. To the extent that the precolonial Igbo judicial system thrived on the belief that serious crimes (like murder) have bizarre consequences on the community at large when it is not resolved according the custom and tradition of the people, it is not proper for the west to have thrown caution to the wind and abolish the Igbo customary criminal law. This research work submits that, while a wholesale return to indigenous criminal procedure may not be practicable, the Nigerian criminal justice system will be greatly improved if some aspects of the Igbo indigenous criminal procedure are adopted, particularly in the areas of informality, speedy dispensation of justice, lower cost of obtaining justice, elimination of technicalities and respect for the customs of the people.

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