Chapter 13
Crime Detection and the *Psychic Witness* in America: An Allegory for Re-appraising Indigenous African Criminology

Babafemi Odunsi

13.1 Introduction

> …Do not believe in anything, merely on the authority of your teachers and elders. Do not believe in traditions because they have been handed down for many generations. But after observation and analysis, when you find that anything agrees with reason and is conducive to the benefit of one and all, then accept it and live up to it. (*Buddha in* Ayorinde 2007, p. 251)

Prior to the advent of colonialism, indigenous people of sub-Saharan Africa had their system of criminology for the prevention or repression of crimes in a broad drive of social control (Ibidapo-Obe 2005, pp. 99–100; Ayo 2002, pp. 193–194). A valuable introduction to the issues discussed throughout this chapter rests on a suitable definition of criminology:

> In its broadest sense, criminology is the entire body of knowledge regarding crime, criminals, and the efforts of society to repress and prevent them. Thus it is composed of knowledge drawn from such fields as law, medicine, religion, science, education, social work, social ethics, and public administration; and it includes within its scope the activities of legislative bodies, law-enforcement agencies, courts, educational and correctional institutions, and private and public social agencies. (Caldwell 1965, p. 3)

With regard to *criminology* inclusively connoting 'the efforts of society to repress and prevent' crime, 'indigenous African criminology' in the context of this chapter would encompass the systems of criminal law, criminal justice, security and law

B. Odunsi, LL.M (Toronto), Ph.D. (Ife) Lecturer (✉)
Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria

MacArthur Fellow, Faculty of Law, University of Toronto, Toronto, Canada
e-mail: sylvanus.odunsi@utoronto.ca; femiodunsi2002@yahoo.com

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enforcement, as well other related social control measures adopted by indigenous African societies for the prevention or repression of crime. Along this axis, in subsequent parts of the chapter, as concepts or terminologies dictate, 'criminal law', 'criminal justice', and the other earlier mentioned components will be adopted in referring to criminology.

Principally, indigenous African criminology is entrenched in beliefs, norms and values designed and adopted by the people for themselves, as a result of which the level of respect and compliance is relatively high (Ayo 2002, p. 193; Elechi 2004, pp. 9–10). This can be adduced to several factors. One, law-breakers and their families were prone to shaming or other forms of social chastising in comparatively close-knitted societies. Second and perhaps more compelling, was that crime control among indigenous people, to a very large extent, involved the intervention of supernatural agencies (Oraegbunam 2009). In the prevention, detection and other aspects of crime control, reference is made to supernatural forces for intervention through oath-taking processes and objects of fetishism, charms, magic and some other measures (Ayo 2002, pp. 195–197, 63, 70–73). The supernatural dimension facilitated a socio-legal atmosphere in which the potent elements of mysticism and debilitating fear of terrifying deities helped to keep crimes at relatively manageable levels (Ayo 2002, p. 194).

Colonialism brought about the incursion of foreign norms, values and laws of the colonizing masters. Inherently primed to supplant the ways of the natives (Ayo 2002, pp. 106–107), the colonial *new order* affected and brought about the relegation and suppression of indigenous practices, including those relating to crime control. The suppression took different forms in a purported drive to 'reform' the 'heathen natives'; Western education, religious ministrations and public policies portrayed indigenous African practices as barbaric and abhorrent (Ayo 2002). More directly, as will be discussed later, the colonial masters summarily outlawed some indigenous social control practices or subjected their validity and sustainability to passing some tests. In substitution, Western-styled law social control mechanisms, regarded as scientific, modern and acceptable, were deployed to replace the supposedly archaic and objectionable indigenous structures (Ayo 2002, p. 98; Elechi 2004, p. 20).

To reiterate, and as will be further discussed in greater detail, the supernatural plays a pivotal role in African criminology. The question regarding the legitimacy and/of African criminal law manifestly dovetails into the question of the *acceptability* of the supernatural platform on which it stands. As Ibidapo-Obe notes, '[t]he pervasive misconception about African law can be observed from the initial reluctance to even ascribe the appellation of law to *what was perceived as a collection of superstition, myths and legends'* (Ibidapo-Obe 2005). However, the logic of the criticisms of the supernatural connection and dependency by African criminology becomes doubtful on the face of developments, such as 'Psychic Witness', where crime control agencies in the United States of America, a developed and technologically advanced country, resort to the supernatural in the process of crime detection.

Against this background, using 'Psychic Witness' as an allegory, this chapter discusses and re-echoes the need for a positive view-point of indigenous African

criminology. That is, the need to reflect on whether the indigenous system still deserves to be a 'target of relegation, renunciation and scorn' and one 'widely touted as being barbaric, repressive, incoherent, inconsistent and irrational' (Ibidapo-Obe 2005). The need for reappraisal will arise from the positive lessons, which indigenous criminology, offers to modern African states in the daunting fight against crime. The lessons become apparent in the light of the increasing preference by educated and enlightened people to indigenous social control mechanisms because of the manifest inefficiency and failure of states' security and law enforcement organs to prevent or repress the very high and fearful rates of crime affecting citizens' lives and properties (Ayo 2002). Nigeria is adopted to illustrate different aspects of this growing trend.

13.2 Psychic Witness

'Psychic Witness' is a television documentary programme showing how American law crime control agencies use extrasensory means to detect or solve knotty crimes. In the programme, '[i]nterviews and dramatic re-enactments show psychics helping police detectives solve real crimes such as disappearances, kidnappings and murders, at various locations in the United States. Two stories are told in each 1 h episode.[1] It is remarkable that, typically, the crimes solved by the intervention of psychics are the ones in which all the modern hi-tech, scientific gadgets as well as skill and training at the disposal of American detectives have pathetically failed to resolve. 'Psychic Witness' is not the only television documentary programme showing the involvement of psychics in the solving of crimes in America. Another programme in this class is 'Psychic Detectives' (2013).

In the interaction with the supernatural, 'Psychic Witness' in America shares an important common ground of similarity with indigenous African criminology, and this can be used to flag off some significant points. It generally shows that the use of supernatural agencies in criminology in an advanced country indicates that such approach can really assist in social control. The supernatural is, as such, no longer an oddity of uncivilised and barbaric people. Hence, indigenous African style criminology should not be summarily disparaged or discountenanced just because it falls outside the scope of conventional science or empiricism. In a way, indigenous Africans who had for long relied on supernatural forces as the epicentre of social control, perhaps, can rejoice that they have not served 'vain gods'. In some respect, 'Psychic Witness' is a testament to the courage of the American system. It is remarkable that in spite of the high level, technological facilities available for crime control, American detectives can pragmatically 'condescend' to adopt an approach more identified with allegedly uncivilised indigenous African people. This is a reflection of America's realistic willingness to embrace any viable measure that can

[1] 'Psychic Witness' online at http://www.tv.com/psychic-witness/show/61792/summary.html (date accessed 12/2/2011).

benefit the country, regardless of the disrespect or disdain for such measures by other people. Inferably, indigenous African criminology system offers some lessons, which the post-colonial governments in Africa and perhaps, other parts of the world can consider in their battles against crime, especially in the face of the inadequacies of the 'modern' criminological mechanisms. What follows is an attempt to expand on what the African criminology system entails.

13.3 African Criminology System: An Intermix of the Physical and Supernatural

Generally, indigenous African criminology evolved from societal traditions, customs, or native laws, and historical circumstances (Okafo 2007, p. 7). In light of the diversity of these factors the approach to crime control, vis-à-vis strategies and techniques, necessarily differed from one society to another. Nonetheless, the common goal across the divergent indigenous societies, whatever the format of adopted strategies, was the attainment of effective crime control and preservation of collective security (Okafo 2007).

Indigenous African criminology entails an interworking or collaboration of physical and supernatural realms, with a predomination of the supernatural (Oraegbunam 2009; Ayo 2002, pp. 195–197). Though it may be difficult to delineate the boundaries of the physical from the supernatural in traditional criminology, an attempt would be made to discuss the typical approaches or methodologies from the physical and supernatural perspectives.

In the physical realm, community members, individually and collectively, play roles in law enforcement and crime control activities. Various community institutions, groups, and members, at family or personal levels are involved. The activities are coordinated and overseen at structural levels of government such as the Family, the Extended Family as well as the whole community, which, geographically, may be a village or collection of villages, towns and so on (Ayo 2002, pp. 197–204; Okafo 2007, pp. 7–8). At each government and administration level, there are provisions for security maintenance, crime prevention, and general law enforcement by the entire community acting together or as is more often the case, through their elected or appointed representatives as well as by specialized agencies, such as the Age-grade groups (Okafo 2007, p. 8).

The practices in some tribal regions offer illustrations of security and law enforcement operations in the traditional African setting. Among the Yoruba of South Western Nigeria, the local professional hunters played a prominent role in crime control and security maintenance. Relying principally on Dane guns manufactured by the local blacksmiths, the hunters kept watch over the vulnerable parts of the communities, especially at night. Where necessary, the hunters' security activities were complemented by vigilante activities involving other members of the communities that might not be professional hunters (Ayo 2002, pp. 197–204).

Along similar lines, among the Igbo of South-Eastern Nigeria; young men's age-grade groups usually carried the responsibility of security maintenance and general law enforcement. The young men's age-grade groups, used diverse approaches to prevent crimes by identifying, apprehending, and prosecuting persons suspected of committing crimes (Okafo 2007, p. 8). The age-grade group's other responsibilities at times extended to enforcement of judicial decisions by different means. In reflecting on the virtual indivisibility of the physical from the supernatural in indigenous criminology, the hunters and vigilantes customarily used juju medicine as supportive devices as well as charms for individual protection or confidence boosting during security activities (Ayo 2002, p. 199).

13.3.1 Indigenous African Criminology: Different Components of the Supernatural Dimension

The involvement of the supernatural in indigenous African criminology takes different forms. Whatever form of involvement or deployment, the essence was to ensure supernatural protection and security for persons and properties, individually and collectively, through reference to some protecting or adjudicatory deities or juju. Supernatural involvement in crime control can be in the form of prevention, detection, resolution, sanctions or any other aspect. Generally, reference to the supernatural is predicated upon the belief that anyone who defies the adopted medium of supernatural engagement would incur the wrath of the overseeing deity or juju, and face dire other consequences. Some approaches among the Yoruba are discussed below as illustrations of the diverse modes or components of supernatural involvement in traditional criminology.

13.3.2 Indigenous Crime Prevention and Deterrence: The Use of 'Alile'

One popular crime prevention measure among the Yoruba is *alile.* This consists of semiotic tags, charms and other objects used for the protection of properties in households, marketplaces, farms and so on to prevent or deter unauthorized use, entry or taking (Ayo 2002, pp. 195–197). The potency of *alile* is not in the symbolic object used, which can be disused footwear, piece of rag, palm fronds, totems and so on. In design and operation, embedded in *alile* is a curse programmed to harm any person who defies the *alile* to tamper with the property which the *alile* protects. The curse, if activated by defiance in tampering with the property, would instigate protecting supernatural forces to inflict severe sanction on the culprit. In the context of criminology, therefore, underpinning *alile* is an expected deterrence of criminal conducts vis-à-vis fear of the supernatural forces to which the property has been entrusted via the *alile.*

13.3.3 Another Perspective of Prevention and Deterrence: Deities on Guard

Somewhat related to the practice of placing *alile* on properties, is the practice of placing households under the protection of some awe-inspiring deities for the security of lives and properties. Customarily, each household in Yoruba is placed under the protection of different deities. Totems of the protecting deities are often placed in conspicuous places to symbolise and publicise their presence (Ayo 2002, pp. 196–197). One of such deities popularly deployed for protection is *Esu.* Though commonly perceived as the biblical devil or Satan, *Esu* is actually regarded by the Yoruba as 'a divinity of mischief who can make things difficult for mankind' (Adelumo and Dopamu 1979, pp. 82–83). In another respect, *Esu* is also regarded as 'a beneficent divinity who is prepared to answer the call of his devotees who give his due' (Adelumo and Dopamu 1979, p. 82). The presence of *Esu* as overseer and protector of a household is normally symbolised by a laterite statue in a human form placed in a slanting position just outside the compound of the household involved (Adelumo and Dopamu 1979, p. 83).

The traditional logic behind using deities as supernatural guards over households is that the fear of incurring the wrath of an implacable god would discourage people from harmful acts, such as stealing from or inordinate attacks on the household. Among the indigenous people, the fear of the deities is potent and real. For example, it is widely appreciated that *Esu* is difficult to placate when provoked, and is so powerful that even his fellow deities are afraid of him. Hence, 'he is held in constant dread, and people at all times seek to be on the right side of him' (Adelumo and Dopamu 1979, p. 82). In underscoring the intimidating ferocity of *Esu* as a protecting deity, the Yoruba believe that once a family or a household has been placed under its protection; Esu 'kills in his typical manner (all) those who injure the buildings or who trespass there with evil intentions' (Ayo 2002, p. 197).

13.3.4 Crime Resolution and Sanctioning: Invoking the Wraths of the Gods

Beyond the paranormal prevention of crimes, indigenous African criminology also entails supernatural intervention into processes of detection, apprehension and sanctioning of culprits, or simply the resolution of crimes in some other ways. A number or all of these processes can be aggregated into one event or instance of intervention. One very common mechanism of propelling these processes is oath-taking.

Generally, oath-taking is a widely accepted and practiced measure of resolution of disputes in indigenous African societies. Used very frequently in crime detection, oath-taking is an integral part of the African custom by which the guilty and the innocent involved in dispute resolution and determination (Oraegbunam 2009, p. 70). The resort to the supernatural process of oath-taking is typically made when

human efforts to resolve the crime fail or there is a lack of confidence in the human organ in charge. As a direct submission to the supernatural entity, oath-taking entails swearing to a deity or juju (that is a supernatural object) for the resolution of a criminal issue or settlement of other contentious matters. The oaths are worded in such a way that the person swearing invokes a conditional curse on his or herself, invoking the deity or juju to punish them if they lie. Guilt or innocence is established upon the basis of whether the accused dies or not, or if the accused falls ill, encounters some grave misfortune or suffers any other expected consequence as a result of the oath-taking exercise. In some cases, the family of such a person and the whole community may vicariously suffer dire consequences too, depending on the stand of the deity or juju sworn to (Oraegbunam 2009, pp. 7–71).

Among the Yoruba, for example, two deities that are more likely to be engaged with in crime-resolution oath-taking are *Ayelala* and *Sango. Ayelala*, is a goddess worshipped in many places across Yoruba land. Her central functions include dispensation of retributory justice and punishing of evil doers (Awolalu and Dopamu 1979, pp. 90–91). In this light, *Ayelala* is 'always thought of as an anti-wickedness goddess and a guardian of social morality… [and also] known and referred to as the Queen of Justice and ready reckoner who passes judgment when the evil-doer has forgotten' (Awolalu and Dopamu 1979). Where suspects to a crime are brought before the court of *Ayelala* to swear to the deity, there are two possible scenarios. One, a culprit, rather than undergoing the swearing process or 'daring' *Ayelala* may confess to his guilt and receive appropriate sanctions. Alternatively, the culprit, refusing to admit guilt, may opt to swear falsely. *Ayelala*'s wrath and punishment on culprits who are guilty but swear falsely manifest in form of swollen limbs and abdomens with terrible agony. Ultimately, this could result in painful death if they still refuse to confess to the unlawful acts (Awolalu and Dopamu 1979). The effect of the dire punishment of *Ayelala* extends beyond the life of an 'executed' culprit as her victim. Such person cannot be mourned. 'Rather than weeping, the people congratulate the relatives of the victims on the removal of the evil-doers from the society' (Awolalu and Dopamu 1979). Similarly, regarding a crime referred to *Ayelala* for supernatural intervention, suspects can also be made to swear to their innocence before *Sango.* This is the Yoruba god of thunder and lightning, who among others, especially forbids lying, stealing and poisoning. *Sango* represents the 'divine wrath upon the children of disobedience' (Awolalu and Dopamu 1979, p. 84) and is highly dreaded for its thunderous and fiery ferocity. *Sango* characteristically sanctions guilty people who swear falsely before it by striking them to death in a blaze of lightning and roaring of thunder. Reportedly, also in case of stealing, *Sango* would also place, for public display, the stolen items on the bodies of the identified and sanctioned culprits.[2] As a form of posthumous sanctions, a person struck down by *Sango* does not receive normal burial; he can

[2]The writer recalls a widely reported incident that occurred in Bolade-Oshodi, Lagos, Nigeria when he was in primary school in Lagos, Nigeria. Following a rainstorm, a group of persons who allegedly conspired in stealing some items of jewellery were struck and killed by thunderous lightning, their deaths popularly attributed to the supernatural wrath of Sango. Diverse accounts

only be buried by *Sango* priests following the performance of necessary rituals at the spot he or she was struck down. Such a person must also not be mourned based upon the belief that the victim has got his due punishment for his evil deeds as *Sango* does not descend to strike, except to express his displeasure for unwholesome conducts (Awolalu and Dopamu 1979, p. 84). The abhorrence of criminal acts and its other attributes make *Sango* a terrifying icon in the supernatural framework of indigenous African criminology.

13.3.5 When Culprits Are at Large: 'Sending' and Unleashing the Gods

Basically, as an indigenous detective or crime resolution mechanism, oath-taking, is typically undertaken where there are identified suspected culprits that are or can be made to swear an oath to determine their innocence or guilt. However, in some cases, the situation of a crime may be such that perpetrators are unknown, at large and cannot therefore be put through the process of oath-taking. In such a situation, an indigenous criminological practice for detection or other aspects of resolving such crimes is to simply 'send' an avenging deity or juju after the perpetrators. The belief is that the perpetrators, wherever they may be, would be magically located, identified and punished appropriately for the crime committed.

> Among the Yoruba, *Ayelala* and *Sango,* two deities whose enormous criminological powers have been considered above, are more likely to be 'sent' to, or after an unknown or eloping culprit. Once located, the deities would deal with the culprit in their respective characteristic manner of punishing offenders as earlier described.

13.3.6 Arresting Criminals Flagrante Delicto: The Deities Working Through Preventive Charms

Apart from involving the gods in the apprehending and sanctioning of culprits, there are some other means of preventing crimes or apprehending criminals either *flagrante delicto,* or after commission of the crime.[3] A widely known practice among the Yoruba is in the form of placing charmed items, usually brooms, at the thresholds of households as means of supernatural security. The belief is that anyone who comes to steal in such secured households would be enchanted by the item of

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reported that the allegedly stolen items of jewellery were displayed on the bodies of the dead persons.

[3] The processes described subsequently are based on stories heard over the ages as well as discussions with some elderly people in the course of research for this paper. Generally, they are trite stories that anyone familiar with indigenous criminological practices of the Yoruba can readily relate to.

juju, and would not be able to steal anything. Rather, the criminal-minded person would be supernaturally trapped, sweeping, until his arrest by the householders.

Another similar mechanism is the practice of placing charms with powers to trap, disorientate, drive away or even fatally harm intruders, depending on the coding of the operative charms. In one form, an intruder may simply be hypnotized and left stuck or roaming around the household until he is subsequently apprehended. In another form, if intruders come in a group, based on the working of the charms, while stuck in the scene of crime, discordance would inexplicably arise among them, and they would start and keep quarrelling until they are apprehended. In some cases too, the charms placed in a household may supernaturally unleash bees, wasps or some other dangerous elements on intruders either to drive them away or to inflict fatal injuries on them.[4]

13.3.7 Involvement of Supernatural Forces in Indigenous Criminal Trial Process: Trial by Ordeal

In some cases, suspects in traditional African societies, based on suspicion or apprehension through any of the means, may be put through a trial process whereby the suspect is made to go through some measures to test his innocence. In this aspect, it is not that the suspect is made to swear to a deity or juju to prove his innocence. Rather, the suspect is taken put through a criminal trial by a challenge; proof of his innocence or guilt lies in whether he prevails over or succumbs to the challenge. The popular form of this indigenous criminal trial process is the much vilified *trial by ordeal*, which has been described as 'one of the greatest safeguards of justice' among the people of Southern Nigeria (Oraegbunam 2009, p. 71). As it will be shown is following discussion, supernatural forces are still involved in this seemingly physical process in the indigenous criminal criminal-justice.

Simply put, *trial by ordeal* is a judicial or trial process whereby guilt or innocence of an accused person is determined by subjecting him to painful, unpleasant and dangerous experiences. According to *The Black's Law Dictionary*, *trial by ordeal* 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….' (Garner et al. 2004).

The ordeals which an accused can be put through are diverse, depending on the morbid creativity of the people engaged in the implementation of the process. In the context of Nigeria, ordeals which suspects could be put through have

[4] This account was obtained from a leader of one of the prominent vigilante groups operating in Abeokuta, Ogun State, Nigeria. The man affirmed that he has such mechanism set up in his house to complement other indigenous protective measures.

included taking poisonous substances, immersion in water, dipping in boiling oil or exposure to the attacks of crocodiles or other wild animals.[5] Furthermore, according to a commentator:

> [t]he ordeal might take the form of the juice of a tree (e.g. sass wood) mixed with water, or a burnt powder made from it and dissolved in water; a knife or other piece of iron might be heated in a fire; the culprit might be taken to a nearby pond or stream. The guilty one is he who should drink the water and become sick, handle the red hot knife and get burnt, or sink when immersed in water. (Elias 1962, p. 229 in Oraegbunam 2009, p. 72)

Premised on a subjective principle of 'the truth shall set you free'; the process of *trial by ordeal* is underpinned by a belief that through some supernatural intervention, preservation or insulation, a person innocent of an alleged crime shall pass through the ordeal unharmed. Hence, only innocent people would confidently opt to endure a trial while guilty ones are likely to confess to their guilt. *Trial by ordeal* can be a matter of life or death, proof of innocence being survival or escape from death or grievous injuries, and death or injuries being an indication of guilt. For example, in a *trial by ordeal,* the Efik of Southern Nigeria would make an accused consume the poisonous 'esere' bean for the purpose of determining innocence or guilt. An accused that vomits up the bean without suffering harm is innocent while one who becomes ill or dies is considered guilty (Roberts and Vink 1998, p. 92). Among the Igbo, a widow suspected of killing her husband could face diverse forms of *trial by ordeal* to determine her culpability or innocence in the death. Sometimes, the accused would be forced to drink the bath-water used in washing the corpse of the diseased. The belief is that she would die if guilty, while her emerging unharmed would be a proof of her innocence (Oraegbunam 2009, p. 72).

13.4 Colonialism: The Entry of Foreign Norms and Laws into Indigenous Criminology

African countries came under the colonial control of various European powers, with Nigeria falling under the control of Britain. The colonial relationship between Nigeria and England engendered the introduction of English law into Nigeria (Obilade 1979, p. 4).[6] This took different modes; in one vein, Nigeria as a component of the British Empire was subject to laws generally applicable to all parts of the Empire. More specifically, English Law in its different genres was formally introduced and made applicable in Nigeria with the commencement of Ordinance 3 of

[5] See *Criminal Code* Cap. C38, Laws of the Federation of Nigeria 2004, section 207.

[6] Obilade (1979, p. 4): 'One of the notable characteristics of the Nigerian Legal System is the tremendous influence of English Law upon its growth. The historical link of the country with England has left a seemingly indelible mark upon the system: English Law forms a substantive part of Nigerian Law'.

14th March 1863 (Obilade 1979). Colonial rule in Nigeria and other African countries had a general impact of radical alteration of traditional or indigenous legal systems, which manifested in ways that include the following:

(a) Transplantation and imposition of laws and norms made for foreign societies with different ways of life and values.
(b) Making of laws for the African societies by foreign colonial masters who were mainly influenced by their own ways of life while they regarded the African ways of life as primitive and unwholesome.
(c) The subjugation of customary law and traditional values to the laws made under circumstances (a) or (b) above.
(d) Fundamental alteration and illegalization of traditional principles and values formulated and operated for many generations and to which members of the societies have been accustomed.

In the context of Nigeria, the sources of law applicable enlarged from mere customary law, as made and generally accepted by the indigenous people, to the following:

(a) Received English Law
(b) Legislation
(c) Judicial Precedent
(d) Customary Law (Obilade 1979)

It bears noting that customary law as applicable from the colonial era was devoid of the strong unfettered legal potency it enjoyed in the pre-colonial traditional setting. It became subjected to the overriding provisions of the three other sources of Nigerian law. In the first instance, the existence of customary law was relegated to issue of facts to be proved before the English-style court before it can be considered for application in any legal dispute. Except in the exceptional situations where a court has taken *judicial notice* (Asein 2005, pp. 122–124)[7] of a customary law due to previous applications, any person relying on such law must establish or prove its existence as facts in issue by means of cogent evidence. The person proves his or her case by the direct evidence of witnesses knowledgeable in the area of the customary law in question or by some other means such as books (Asein 2005, p. 129). The basis for this procedure is that the judge is regarded as not being aware of the customary laws, even if he comes from the area where the customary law in question applies. However, unlike customary law, there is no need to prove any of the other three English law-based sources of Nigerian law in court as the judge is summarily deemed to have knowledge and awareness of them.

[7] This is a process where, due to previous and frequent applications of a customary law, a court would be deemed to have knowledge and awareness of it such that there is no need to prove its existence afresh before the court where the customary law comes into question. See Asein (2005, pp. 122–124).

Secondly, after proving the existence of any customary law by evidence, such law would be further subjected to legal tests of validity before it can be deemed valid and applicable (Kolajo 2005, pp. 129–138). The tests of validity are:

(i) Repugnancy Test
(ii) Incompatibility Test
(iii) Public Policy Test (Kolajo 2005)

The *repugnancy test* connotes that any customary law 'repugnant to natural justice, equity and good conscience' would be held invalid and unenforceable as law.[8] The *incompatibility test* connotes that any customary law that is 'incompatible with any law for the time being in force' would be invalid and unenforceable as law. In operation, the effect of this test is that any customary law that conflicts or incompatible, directly or indirectly, with any of the other three sources would be invalid and unenforceable.[9] The public policy test connotes that any customary law that is 'contrary to public policy' would be invalid and unenforceable as law.[10] Public policy is flexible and has been described as 'an unruly horse which once one gets astride it no one knows where it would end'.[11] In this respect, 'public policy' has such a dynamic latitude that, based on the inclination of the government at a particular time; it can be invoked or adapted to strike down a customary law that is not caught within the web of the other two tests of validity. A key point of note in the *validity tests* is that the procedure being the legal creation of the colonial masters, naturally was influenced by values of the colonial rulers who were alien to indigenous African societies.

In the web of the legal restrictions on customary law, customary criminal justice system and some criminological mechanisms as previously operating in traditional settings became virtually illegitimate, a situation that still operates in the present times. Section 36 (12) of the Constitution of the Federal Republic of Nigeria, 1999 offers a case-study. The section provides that '…a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefor prescribed in a written law…' 'Written law' refers to formally promulgated enactments such as Acts of the National Assembly or a law of a state, as contrasted with customary law that is *unwritten* [12] in not being formally made by the conventional legislative process. Thus, it is only crimes set out or written in legislative enactments that would constitute crimes for which someone can be tried and sanctioned. Hence, customary law crimes, which characteristically are unwritten would be null and void and of no legal effect whatsoever.[13]

[8] On this basis, the courts have nullified different customary law rules which were hitherto held sacrosanct and impeccable among the people in the traditional pre-colonial settings. See e.g. the case of *Edet v Essien* (1932) 11 NLR 47.See also the relatively more recent case of *Okonkwo v Okagbue*, (1994) NWLR (368) 301.

[9] See e.g. the case of *Malomo & Ors v Olusola & Ors*, (1955) 15 WACA 12; see also the case of *Okoriko v Otobo* (1962) WNLR, 48.

[10] See e.g. the case of *Re Adadevoh*, (1951) 13 WACA 304; see also the case of latter case of *Meribe v Egbu* (1976) 3 SC 23.

[11] *Enderby Town Football Club v Football Association Ltd* [1971] 1Ch 591 at 606, per Denning M.R.

[12] See the case of *Lewis v Bankole*, (1908) 1NLR 81 AT 100.

[13] See e.g. the case of *Aoko v Fagbemi* (1961) 1 All NLR 400.

Furthermore, some colonial legislative provisions emerged to suppress some components of indigenous criminology in the scope of the *incompatibility* test. For example, with regard to the earlier discussed practice of *trial by ordeal*, section 207 (1) of the *Criminal Code* (Okonkowo 1990, pp. 4–5)[14] provides that:

> The trial by the ordeal of sasswood, esere-bean, or other poison, boiling of oil, fire, immersion in water or exposure to the attacks of crocodiles, or other wild animals, or by any ordeal which is likely to result in the death of or bodily injury to any party to the proceeding is unlawful…

In a related manner, section 208 of the Code further provides that:

> Any person who directs or controls or presides at any trial by ordeal which is unlawful is guilty of felony and is liable, when the trial at which such person directs, controls or presides at results in the death of any party to the proceeding, to the punishment of death, and in every other case to imprisonment for ten years.

Similarly, concerning the securing properties with charms, paranormal forces and so on, section 210 of the *Criminal Code* provides that…Any person who…

> (c) makes or sells or uses, or assists or takes part in making or selling or using, or has in his possession or represents himself to be in possession of any juju, drug or charm…which is alleged or reported to possess the power of causing any natural phenomenon or any disease or epidemic; or
>
> (d) directs or controls or presides at or is present at or takes part in the worship or invocation of any juju which is prohibited by an order of the Minister;… is guilty of a misdemeanour, and is liable to imprisonment for two years.

In effect, the legal system introduced through colonial rule suppressed indigenous criminal law system which the African people were used to and replaced this with alien and incongruous European models of crime control in its different dimensions. Centralised and bureaucratised in nature, the introduced systems had some features. Responsibility for crime control was placed with a formally organised state police who, as components of this central duty, undertake the investigation of crimes, apprehending of law breakers and related activities. Furthermore, imprisonment became a predominant form of criminal sanction. Generally, the complex rules and prescriptions connected with the introduced criminal-justice system inevitably informed the need for lawyers, judicial officers and other professionals to oversee and operate the processes in line with the technicalities. The following commentary offers an apt summation of the incursion of European based criminal law system, and the consequential suppression of indigenous African criminal law practices in Nigeria and other parts of Africa:

> Africa has inherited its approach to the treatment of crime from its colonial era. Some prisons now standing were erected in the nineteenth century and the legal systems followed the colonizers as surely as the Roman Laws went with the Legions. Similarly, treatment systems were European in origin and made few concessions to tribal tradition…[The] importation of foreign treatment measures for offenders was often blind to the better and more effective arrangements locally available. (Clifford 1974, p. 185 in Elechi 2004, p. 20)

[14] Cap. C41, Laws of the Federation of Nigeria 2004. The Criminal Code was enacted in Nigeria on 1st June, 1916, when Nigeria was still under colonial rule; the code was an adaptation of the Criminal Code made for the State of Queensland, Australia in 1899 which in turn emanated from a draft code intended for England in 1878.Okonkwo, *Okonkwo and Naish* (1990, pp. 4–5).

The broad effect of the tests of validity and other interventions in the application of customary law and practices was that customary law, which was supreme in pre-colonial traditional settings, became subordinated to foreign oriented laws. Reflecting on the depth of the subordination, a writer has described the existence of customary law, vis-à-vis its operation in relation to the other sources of law, as a 'legal make-belief' (Oraegbunam 2009, p. 74).

13.5 Indigenous African Criminal Law System and the Imposed Foreign System: Reflecting on Levels of Effectiveness

The use of criminal law, vis-à-vis sanctions as a means of social control, has been predicated on four rationales or expectations. These are *incapacitation*, *rehabilitation*, *deterrence* and *retribution* (Cobley 2005, p. 192). The effectiveness of a criminal law system can thus be measured on how well it succeeds in meeting these expectations in its crime control drive.

The essence of incapacitation is to protect people from deviant conducts by putting away the offender, rendering him unable to cause further harm in the society. Incapacitation can be partial, as in confinement, or total, as in execution of criminals convicted for heinous crimes. Temporary incapacitation under the indigenous African criminal law system can be in form of banishment or affliction with illness by the gods; total incapacitation can be in form where an offender is struck dead by the gods as punishment. With regard to rehabilitation, the aim is that sanctions would reform the offender. Once properly adjusted and compliant with existing norms, the offender would desist from deviant conducts. This aspect is a prominent component of indigenous criminal jurisprudence. Hazardous punishment is typically a last resort in indigenous societies. At different stages, for example, at the point of oath-taking, an offender has an option to admit his guilt and make restitution to the victim or take some other steps to atone for his misconducts. Generally, pursuit of restoration of societal amity and reconciliation is an inherent and important aspect of indigenous practices (Elechi 2004, p. 18). Among other things, this serves the purpose of reforming the culprit who has stepped out of social order. Depending on the context of usage, 'retribution' can connote different concepts such as revenge, denunciation, atonement, or 'just desserts' – that is, the law-breaker gets what he justly deserves. In traditional societies, sanctions as retribution are not primarily for the purpose of vengeance. Essentially, retribution represents the society's collective denunciation or expression of disapproval for the deviant conduct of the offender. In another aspect, it translates to the offender's atonement for his misconducts against the victim and the society as a whole. Retribution also forms a basis for the restoration of societal cordiality. It is in this respect that retribution in the traditional context, at times, would entail the offender, directly or through offender's family, making propitiation to appease deities of the land who have been displeased by the

offender's conduct (Elechi 2004, p. 18; Oraegbunam 2009, p. 64; Awolalu and Dopamu 1979, p. 84).

'Deterrence' in its theoretical framework has different perspectives. First, there is the aspect of a standing threat, and the related fear, of supernatural sanctions discouraging people from criminal acts. Where an offender has been actually sanctioned this may serve as deterrence at individual and general levels. Individual offenders would be deterred from future misconducts by their unpleasant experience of sanctions, while others, expectedly, would learn from the situation of the sanctioned offender (Fitzmaurice and Pease 1986, p. 48). Finally, the threat of punishment stands as a form of education and a strong expression of society's disapproval of an act, with the effect of a sanction.

The scenario propels and reinforces the public moral code, creating conscious and unconscious inhibitions against committing crime. Punishment, in form of wraths of the gods or juju, evidently stands as a strong deterrence factor against crime among the indigenous people. With manifest appreciation of the extent of their powers, anger and severity of harm they can inflict, the people reasonably have a strong point to refrain from confronting the gods through criminal acts. A saying among the Yoruba relating to *Sango*, the god of thunder, one of the sanctioning deities earlier discussed, tends to illustrate the capacity of gods to deter deviant acts. The saying goes thus: '*eni Sango ti oju e w'ole, ko ni ba won bu oba koso*' ('He who has seen *Sango* [the god of thunder] striking, would never join in insulting or confronting the *King of Koso'*).[15]

Apparently, indigenous crime control mechanisms have functioned effectively in the scope of the four rationales or expectations of criminal law discussed above. Studies have shown that, on the whole, the indigenous systems have contributed to the effective control of crime in the pre-colonial African societies (Okafo 2007, p. 5). Underscoring the level of effectiveness of the indigenous crime control mechanism, concerning Yoruba pre-colonial communities, it has been reported:

> Although the maintenance of security at community level has been an important preoccupation of the Yoruba peoples from time immemorial, the need to pay more serious attention to the issue seems to be mostly felt since independence. In the precolonial era, the strategy adopted against insecurity or threats to life, and property was more preventive than combative. *During this period, the experience with night attacks from marauders, resulting in intracommunal loss of lives and property, was more or less unheard of in the rural communities.* (Ayo 2002, pp. 193–194)

Comparatively, the level of effectiveness of indigenous criminology as described above can hardly be attributed to the English criminal law system imposed on Nigeria through colonial rule. So much has been written about the inadequacies and ineffectiveness of the foreign criminal law system in stemming the tide of criminal conducts in Nigeria and beyond (Ayo 2002, pp. 191–193). While the defects of the

[15] 'King of Koso' is one of the cognomens of Sango. Put differently, the saying can mean that the fear of Sango is a strong basis for caution, as no reasonable person who has seen Sango striking down a wrong doer would want to express such a situation.

foreign system cannot be fully engaged within the restricted scope of this work, it bears noting that the reformative and deterrent impacts of criminal sanctions in preventing crime under the system have particularly been questionable for long. Along this line, it has been observed by a source that,

> …if the wrongdoer calculates at all, it is not upon the probable account of the punishment, but upon the chances of detection – from which it follows that…severe and barbarous punishments are not more effectual than milder ones as deterrents to crime. (Ashworth 1997)

The alarming level of violent and other heinous crimes in Nigeria and other parts of the world, where the foreign system operates, offers an attestation to the limitations of the system. From all indications, there is no longer the fear of criminal sanctions or much reverence for the prescribed social norms and rules.

The relative success and effectiveness of the indigenous criminal law system in the prevention and control of crimes in the pre-colonial societies can be attributed to some factors. Unlike the modern system, which seeks to adopt a 'one size fits all' approach over a cross section of culturally and historically diverse peoples; crime control mechanisms in pre-colonial Africa varied from one community to another. The indigenous strategies of crime control in pre-colonial Africa grew out of each society's traditions, and customs. The strategies also grew out of native laws and the society's historical circumstances and desires.

In the pre-colonial societies, community members, individually and collectively, played roles in each society's law enforcement efforts. This is unlike in the modern system where these tasks are consigned to centrally controlled police and other law enforcement agencies, which largely do not enjoy the trust and confidence of the people. Being home-grown, community members generally accepted and respected the community's methods and procedures for security maintenance and crime control. Members of each community knew the people engaged in the community's security, and crime control machinery, vis-a-vis moral and other credentials. Hence, persons of questionable character were not likely to be entrusted with security or crime control tasks. This is unlike the modern system where security and crime control activities are vested in a relatively detached police force that perennially face questions of incompetence, corruption and other vices.

Furthermore, the intervention of supernatural forces in the dispensation of harsh punishment to wrongdoers serves to instill raw fear in people, offering a strong deterrent force. The level of confidence and beliefs in the capabilities of relatively incorruptible avenging gods, from whom there is virtually no escape, is so high that it is sufficient to dissuade many from wrong doing. In the case of the modern system, the element of fear has been watered down due to different factors. Unscrupulous lawyers, corrupt judicial officers and law enforcement agents and so on tend to offer an avenue of escape for offenders, with a widespread belief that justice is for the highest bidder (Adegunde 2005, pp. 51–52). Besides, the technologically advanced gadgets deployed to crime control, even record failures, due to various limitations – a situation that, perhaps, informs the American detour to the supernatural realm as depicted in *Psychic Witness*.

13.5.1 Clamour for the Past

Despite strenuous efforts at suppressing it by law and other Western influences indigenous criminology and social control system survived and retained its influence in the colonial era and beyond. The prevalence and confidence in indigenous social control mechanisms until the present time is well established. For example, in Nigeria, the indigenous criminological practice of oath-taking remains a popular process of ensuring fidelity or exacting truth. So venerated has been the process that even among political office holders in charge of governance have shown a preference for oath-taking in ensuring performance of pacts entered into with associates instead of relying on conventional courts legally established for such purposes (Okafo 2007, pp. 5–6; Oraegbunam 2009, pp. 69–70).

To reiterate, oath-taking has always been an acceptable practice and a common feature of dispute resolution and crime detection among indigenous Africans. The people's strong belief that it is one of the assured ways of obtaining untainted justice has enabled this practice to survive and remain appealing as a legitimate social control process (Oraegbunam 2009). Along similar lines as oath-taking, there are indications that indigenous criminal law practice of *trial by ordeal* still finds acceptance among the people. An illustration, though a tragic one, was the widely reported 'Okija incident' of 2004 in which police recovered many human skulls and decaying bodies at the site of a shrine in eastern part of Nigeria (Oraegbunam 2009, p. 5).

Preference of supernatural processes of oath-taking or other indigenous practices as dispute-resolution or crime control mechanisms in modern times, above and beyond the conventional legal or judicial mechanisms, raises a central issue of confidence. In one dimension, it signifies the high level of confidence reposed in a long existing indigenous social control apparatus. On the other side, it reflects the lack or low level of confidence in the Western-style conventional mechanism imposed by the colonial masters and sustained by post-colonial governments.

However, the persistent attractiveness of indigenous practices of oath taking, *trial by ordeal* and so on appears to be a paradox. From colonial days till now, some people have unwholesome impression or perception of the practices. For example, in the context of the modern times, a commentator had this to say about oath taking: '[the] practice of oath-taking is not only fetish, barbaric, uncivilized, outdated, anachronistic, criminal, illegal but also contrary to Nigerian jurisprudence as it is superstitious, mysterious, and spiritualistic in a society that is supposed to be dynamic and not static' (Oraegbunam 2009, p. 79). Along similar lines, a judge of the Nigerian Court of Appeal – the next to the highest court in the country – in disagreeing with the position of a lower court on oath taking gave this opinion:

> The belief of the learned trial judge that disputes are decided by swearing "Juju" may be true as a matter of the past. In this century, *that will be a retreat to trial by ordeal which is unthinkable any more than swearing 'Juju' as a method of proof. We cannot now reel back to superstitious fear and foreswear our religious faith.*[16]

[16] *Iwuchukwu v.Anyanwu* (1993) 8NWLR (pt 311) 311 at 323 [emphasis added].

There arises the question of why people persistently find the indigenous social control practices attractive in spite of the uncomplimentary impressions and comments about them, as shown above. Some explanations can be given for the scenario. One is the dissatisfaction and disenchantment with the foreign English criminal-justice system because of its perceived ineffectiveness and inefficiency in crime control and other aspects (Elechi 2004, pp. 20–21). Due to the unceasing increase in the incidence of crimes coupled with the brazen impunities of criminals, as well as criminals escaping sanctions, many tend to view that the foreign English system is ineffective and inefficient for social control in the country. Naturally, there arises a yearning for the 'good old days' when the gods dispensed justice impartially and effectively. This propels an interest and preference of the traditional ways of solving criminal, socio-political and other problems.

It is not only in the area of social control that the colonially imposed system has failed African people. In some places, services, infrastructure and institutions provided by the state justice and other systems are not existent or bare. Consequently, many Africans, especially those in rural communities, feel alienated from the imposed foreign system of social control and services. This, in some ways, has accounted for renewed interest in indigenous systems of social control and service provision, which the people tend to see as more sympathetic and beneficial. Commenting on the persistent and renewed interest in indigenous systems of social regulation and control, it has been observed:

> The renewed interest is based, in part, on the fact that these institutions have proven to be resilient. In addition, they are more effectively institutionalized, and Africans rely upon them to provide required goods and services in the face of the failure of the formal, colonial-based structures. Such goods and services include: security, roads, bridges, schools, post offices, mechanisms for conflict resolution, common-pool resources management and credit provisions, to mention a few. (Elechi 2004, pp. 21–22)

Thirdly, due to fundamental socio-cultural differences, the English-based system of social control in Nigeria lacks the cultural relativity that it enjoys in England, its place of origin. Many Africans, over generations, have simply abided in the traditional ways of operating, disconnected from the foreign system. The ineffectiveness of the foreign system in different areas gives a sense of justification to the adherents of the traditional ways and a stimulus for others to return to the 'old ways of the ancestors'. This situation is well illustrated by a popular refrain among the Yoruba, '*e je ka'se bi won ti nse, ko ba'le ri bi o ti nri*' which, contextually means, 'let's do things the way of our ancestors, so that things would be right or proper'.

Another basis of attraction of the indigenous justice system is the comparatively inexpensive, prompt and relatively uncomplicated nature of the system. By and large, the indigenous justice system appears to satisfy people's yearnings for quicker, less expensive, and culturally relevant justice and social order. The Western-style criminal-justice system is an adversarial contest between the government prosecutors and defence lawyers for the accused in which the victim becomes a mere prosecution witness (Obilade 1979, p. 120).Operating the system entails the operation of a complex set of rules, procedures and technicalities with the involvement of judicial officers, and lawyers on opposing sides for prosecuting and defending the accused. It is trite that the process is cumbersome, expensive, time consuming,

and insensitive to the plight of victims in some circumstances. On the contrary, the traditional justice system, being of a restorative and reformative nature, constitutes a prompt, uncomplicated process permitting active involvement and participation by victims, offenders, families and the entire community in arriving at a resolution acceptable to all concerned. Generally, victims of crime under the indigenous justice system are given access to mechanisms of justice and to prompt redress and remedies such as restitution, supported with material and emotional support, unlike the mechanical and impersonal imposed system where victims feel re-victimized by government agencies of social control (Elechi 2004, p. 22). The situation has been summed up this way:

> Essentially, the foreign system contracts poorly with the African criminal justice system… The traditional procedure was simple and devoid of any formality. The approach was more of common sense as opposed to crass legalism or technicality. The natives invariably found it to be convenient and intelligible, being grounded in familiar concepts and notions. They were afforded full participation in this speedy and cheap administration of justice. (Obilade 1979, p. 120)

From the foregoing, it is evident that the continued and increasing embrace of indigenous social control practices in the modern times is not likely to cease any time soon. Diverse reasons and factors will continue to make the traditional ways appealing to Africans, propelling them to further embrace indigenous practices of social control, in disregard of the colonially introduced approaches. The relatively recent resurgence of indigenous security and law enforcement systems and organizations in some African countries highlight this point.

There are diverse forms of unofficial, indigenous security and law enforcement systems and organizations in different parts of Africa. Kick-starting or catalyzing this trend is the general belief that the official, Western-styled systems and organizations are incapable of, or have failed in, providing needed security and law enforcement as effectively as the indigenous systems. The other related reason for the re-emergence of the indigenous styled security and law enforcement organizations is that most citizens consider the official government crime control and law enforcement agencies as imposed, irrelevant, and different in forms and procedures from the citizens' traditional outlooks, convictions, practices, and beliefs.

For example, in Nigeria, where the confidence of citizens in the official government security and law enforcement agencies has seriously waned, if not totally lost, indigenous security and law enforcement organisations have emerged at different times among the dominant tribal groups.

The *'Bakasi Boys'* emerged among the Igbos of the South-Eastern part, while the *Odu'a Peoples Congress (OPC)* emerged among the Yoruba of the South-Western part.[17] In their operations, the *Bakasi Boys* and the *OPC* customarily embrace and rely on supernatural powers, based on indigenous African religious beliefs and practices. Highlighting the *modus operandi,* effectiveness and the related high level

[17] The *Hisha* also emerged among the Hausa/Fulani of the Northern part of Nigeria. "The *Hisha*, is an Islam-based law enforcement organization, officially charged by governments of each of the states where it is operating, with the responsibility of enforcing the state's *shari'a* system". Okafo (13–14).

of public confidence in these indigenous security and law enforcement organisations, a researcher made the following findings concerning the *Bakasi Boys*:

> In the southeastern states of Nigeria where the *Bakasi Boys* operate, the organization is widely regarded as an effective public security and law enforcement group. The organization is, over and above the NPF (the official police), the de facto guarantor of public security, particularly in the Igbo area of the country. The *Bakasi Boys* are reputed to be so good that they are capable of identifying a criminal despite attempts to conceal his or her identity. The *Bakasi Boys* move from one community to another fishing out suspected criminals (mainly perennial thieves, armed robbers, and murderers), arresting, and quickly judging and punishing the criminals. The punishment is typically death, which is applied swiftly by decapitating and burning the adjudged criminal. In my summer 2000–2006 field trips to Nigeria, most of the locals with whom I discussed the *Bakasi Boys*' operations expressed satisfaction with, and enthusiastic support for, the *Bakasi Boys*' crime-fighting activities. Most of the locals expressed confidence that the *Bakasi Boys,* [ostensibly, using indigenous supernatural powers] are able to accurately identify a criminal even among a large group of people, thus avoiding misidentification or punishment of an innocent person. (Okafo 2007, p. 14)

Apart from the large, coordinated, and well-organized indigenous organisations found in African countries, such as the '*Bakasi boys'* and *OPC,* there are other groups operating on principles and ideals of security and law enforcement agencies of pre-colonial African societies. These include neighborhood watch organizations or vigilante groups, found in most African communities, urban and rural. These smaller groups, similarly, arose due to the limitations and inadequacies of the official law enforcement organisations. These security organisations exist to help safeguard security of lives and properties of citizens. In another respect, like the age-grade groups of Igbo land and the hunters association in Yoruba land, as earlier discussed,[18] able bodied young men of each community, acting as vigilantes and supported financially and materially by the other community members undertake tasks of securing the community and enforcing the law. Ordinarily, they operate with the aids of small weapons, and typically as Africans, some reliance on magical powers. In different measures, these organisations contribute significantly to security and law enforcement across Nigeria. With the relative satisfactions of citizens with their services and the persistent shortcomings and loss-of-faith in the government security agencies, there will be a continuous need and recourse to these social control features of pre-colonial Africa.

13.6 Indigenous Social Control Practices in the Framework of the Modern System: Semblances of Official Recognition and Approval

Undeniably, in embracing the services of psychics in crime detection, American law enforcement agencies offer a tacit recognition and appreciation of the legitimacy of supernatural intervention in crime control in the modern times. In diverse ways,

[18] See the section headed, '*African Criminology System: an Intermix of the Physical and Supernatural*'.

official government institutions in Africa too have been lending credence to the legitimacy of the supernatural components of indigenous African criminal and social control practices. The positions and pronouncements of some high level Nigerian courts, including the Supreme Court, the highest court in the country, on oath-taking offer some illustrations.

In the Supreme Court case of *Ume v Okoronkwo & Anor*[19] a case emanating from a native arbitration in respect of title to the land in dispute, Oguegbu J.S.C. while delivering the lead judgment, with a tacit note of approval, *inter alia,* pronounced oath-taking as 'one of the methods of establishing the truth of a matter and was known to customary law and accepted by both parties'. Similarly, in the case of *Ofomata & ors v. Anoka*[20] the question of the legal validity of oath- taking arose for resolution. On the issue the judge, Agbakoba J held,

> Oath-taking is a recognized and accepted form of proof existing in certain customary judicature. Oath may be sworn extra-judicial but as a mode of judicial proof, its esoteric and reverential feature, the solemnity of the choice of an oath by the disputants and imminent evil visitation to the oath breaker if he swore falsely, are the deterrent sanctions of this form of customary judicial process which commends it alike to rural and urban indigenous courts. It is therefore my view that the decision to swear an oath is not illegal although it may be obnoxious to Christian ethics….

Again, in the case of *John Onyenge & Ors v Loveday Ebere & Ors*.,[21] a land dispute case, the question regarding the legitimacy of oath-taking as a component of the customary justice process came up before the Supreme Court. In a unanimous decision, the Court upheld the verdict of a lower court, which was based upon the oath sworn before the '*Ogwugwu Akpu*' of Okija in Anambra State. In the lead judgment, to which other justices concurred, Niki Tobi J.S.C. reaffirmed the Supreme Court's recognition of oath-taking as a valid and legitimate process of customary law arbitration.

Apart from the judicial credence which the indigenous practice of oath-taking has enjoyed in relative measures, as illustrated in the above-noted cases, the process finds some statutory support too. In one respect, there is the range of enactments at federal and state levels, providing for oath taking in respect of public offices or duties, or to ensure fidelity on the part of witnesses in judicial proceedings. True, these may not substantively be the same as the indigenous genre of oath-taking, which entails the invocation of an awe-inspiring deity or juju; nonetheless, the fact that a person may swear on oath to a supernatural entity as, he elects, still has some generic connection with the traditional practice of oath taking. However, in a manner that is significantly similar to the indigenous format of oath-taking, the *Oaths and Affirmation Law* of Kwara State, one of the states constituting the Nigerian federation, provides that an oath may be offered to the other party challenging him to support his allegation by swearing to a traditional form of oath.[22]

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[19] *Ume v. Okoronkwo* (1996) 12 SCNJ, 404.

[20] (1974) 3 ECSLR 251 at 254.

[21] (2004) 6 SCNJ 126 at 141–143.

[22] *Oaths and Affirmation Law*, Cap 108, Laws of Kwara State 1994, Sects. 7 and 8.

Beyond the issue of official appreciation of the indigenous practice of oath-taking as earlier discussed, there have been other forms of official appreciation and recognition of the relevance of indigenous criminological practices in the modern times. As a pointer, by means of government policies, laws and logistics in some cases, indigenous security and law enforcement bodies are given legitimate platforms to operate, at times in collaboration with official enforcement bodies.

13.7 Conclusion

The different facets and mechanisms of indigenous African criminology have been considered in previous sections. One factor that runs through and constitutes the bedrock of the indigenous criminology is the inherent, and virtually inevitable, involvement of the supernatural. Even in the essentially physical acts of security and law enforcement entailing patrol, night-watch and related tasks, there is still a reference to the supernatural. The supernatural outlook emanates from the religious, ritualistic or mystic structures in which the traditional criminological practices are grounded.

With the pivotal involvement of the supernatural in indigenous African criminology, it has faced the criticism of being unscientific and concomitant question of acceptability. In a related vein, due to fundamental socio-cultural and religious differences, the colonial masters perceived and disapproved of indigenous social control practices as outdated, barbaric and generally unwholesome. There resulted the suppression of indigenous criminology. The suppression, as earlier noted, took two main approaches. One, foreign criminological systems were imposed, set in the broad structure of introduction of the laws of the colonial masters. Two, there was specific outlawing of indigenous criminological practices by criminal law statutes.

It is true that there can be some cogent grounds to disagree with some aspects of indigenous criminological practices. Being subjective and unscientific, due to reliance on the supernatural, there is the possibility of error and irredeemable miscarriage of justice. For example, there would be a legitimate basis for concern over the way the *Bakasi boys* magically and subjectively identify or detect criminals who were then subjected to summary execution by decapitation and burning. Such manner of dispensing justice may indeed lend credence to the perception of indigenous criminology as 'spiritualistic, barbaric, uncivilized, and criminal'; this would particularly be so, based on the irreversibility of the sanction where an executed accused is later found innocent. Put simply, the possibility of mistakes or mischief on the part of supernatural forces or their human agents makes entrusting crime detection to supernatural forces questionable.

Realistically, the likelihood of miscarriage of justice through reliance on supernatural mechanisms and subjective procedures cannot be trivialized. However, inferring from the range of accuracy in the identification of criminals as shown in different episodes of the programme, the American 'Psychic Witness' seems to be showing, from a somewhat scientific or statistical perspective, that the supernatural forces are not as error-prone as to be out-rightly unreliable. Moreover, in the

modern *scientific* and objective criminal systems operated in the technologically advanced countries like America, even in the twenty first century, there are still reports of miscarriage of justice resulting in horrendous suffering, judicial murders or near murders of innocent persons (Grisham 2006). If these *modern* systems are not summarily deemed unacceptable and discarded because of instances or possibility of errors of judgment, then the indigenous system should not be vilified and summarily discarded on the same ground. At any rate, as shown before, indigenous African criminology, in outlook, is not inherently abrasive and blood-lusty. Incidents such as the depicted *Bakasi* scenario, perhaps, should be considered as manifestations of overzealousness catalysed by circumstances in which the *Bakasi Boys* operated.

The charge that indigenous criminological practices are anachronistic and uncivilized is also debatable. It is trite that in the present times, many Africans have acquired high level Western education and values as well as embracing Christianity and other non-indigenous religions. Yet, many Africans, including those in government, still maintain high confidence in indigenous practices, especially oath-taking, for the resolution of disputes, as well as charms and related devices for security, solution to problems and other purposes. In this light, it would be inappropriate to criticize indigenous practices as anachronistic or uncivilized. Furthermore, seemingly, through 'Psychic Witness' and related programmes, America is showcasing the efficacy and desirability of supernatural intervention in modern criminology, or at least as a complement. If America or American security agents are not criticized as uncivilized for reference to the supernatural, then it would be unfair to adjudge the indigenous African approach as such.

Whatever misgivings one may have against the indigenous criminological system, its strength and effectiveness as a social control measure in the modern times should not be overlooked or underrated. 'The wide acceptance that the indigenous models enjoy over their Western-based counterparts strongly attests to the relevance and currency of the indigenous African systems of control, justice, and law even in the modern State' (Okafo 2007, p. 18). The confidence and preference of the indigenous social control mechanisms logically signify the level of effectiveness and compliance the mechanisms would enjoy if deployed by the governments.

Nigeria and other African countries are confronted with disturbing levels of violent and other crimes. The Western-style machineries and institutions for combating the crimes have been found to be ineffective in the battle against crimes. Clearly underlying the impunity with which criminals operate is the lack of reverence or fear of the modern Western-style criminology systems unlike the scenario in the pre-colonial societies. Considering the utility of the indigenous systems in the prevailing circumstances, there is an incontrovertible need in many African countries for the governments to recognize and promote the relevant indigenous systems of security maintenance, crime prevention, and general law enforcement. The first step is to change the perception of indigenous criminology as barbaric, uncivilized and so on, just because of its supernatural or *unscientific* tilt. The American 'Psychic Witness' has shown that there is indeed a need to re-appraise the usefulness of indigenous African criminology. The persistence of indigenous practices in diverse forms also buttresses the need for the re-appraisal.

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