NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF ART AND SOCIAL SCIENCE

COURSE CODE: ***CSS 356:***

COURSE TITLE: ***TRADITIONAL AND INFORMAL MECHANISMS OF CRIME CONTROL***

CSS 356: ***TRADITIONAL AND INFORMAL MECHANISMS OF CRIME CONTROL***

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INTRODUCTION

CSS 356: Traditional And Informal mechanisms of Crime Control is a 3-credit unit course.

The course has no compulsory prerequisite for it to be registered for. The course guide informs us on what this course is all about, what students should appreciate in each unit, what text materials we shall use and how we can make the best use of these materials. This course guide also emphasizes the need for students to take tutor marked assignments so seriously. However, necessary information on tutor marked assignments shall be made known to students in a separate file, which will be sent to each of them at the appropriate time. This course is also supported with periodic tutorial classes.

What you will learn in this course

CSS 356: Traditional And Informal Mechanisms of crime control as a course in the field of criminology at the National Open University of Nigeria focuses on a wide range of issues that bother on traditional use of age-grade system, norms and mores, oat taking, witchcraft, Juju and divination among other s in preventing, detecting and controlling crime which engenders discipline with sanctions to erring members of the society. In this course, we will carefully analyse and assess various definitions of traditional means of combating crime, as well as the formal means of combating crime among others.., assist the students not only to distinguish between the traditional and formal means of controlling

crime but also to develop a diagnostic framework through which they can proffer solutions towards this hazard (crime) and what should be considered as effective crime control management.

This course covers a wide range of issues regarding crime control including the African versus western thoughts on social control, justice and law, formal versus informal mechanism, the use of "Ayelala" – traditional means, western policing methods, to mention a few. In this course, we shall find every aspect very interesting and knowledge driven.

Course Aims

The overall aim of CSS 356: Traditional and informal mechanisms of crime control as a course is to introduce you to the basic definitions of concepts relating crime control, management, indigenous mechanism of combating crime and as well as what is obtainable in a formal (Western) setting of combating crime. It is also aimed to exposed student or reader to knowing most of the existing traditional mechanisms of crime control in the past, among are age-grade control, oat taking, divination, deity consultation (Ayelala) among others. A comparison of this (traditional mechanisms) with the formal (Western mechanisms) of crime control. Presenting the conceptual meanings, case studies and the impact assessment of threat to human existence.

Undoubtedly, the way the course draws its references from Nigeria and Africa in the analysis of various mechanisms of crime control

makes it astounding and thought provoking to providing a pathway for African students and scholars in the field of criminology.

The course is also aimed at:

- Define and explain Traditional and Informal mechanism if crime control
- Connections and disconnections with the formal mechanism system
- What is the nature of the relationship among Control, Justice and Law – the dichotomies discussed?
- Philosophical and pragmatic components of Native African versus western thoughts on social control, Justice and Law.
- Opportunities to strengthen and grow Native African mechanisms of crime control
- Correlates of formal and informal social/crime control.
- Indigenous and English policing (Control) in Nigeria
- Indigenous social control in a modern African state.
- Patterns of indigenous security maintenance
- "Ayelala" – Origin and Functions
- Judiciary and Ayelala's challenge
- Fostering social trust and community re-integration
- Judicial system reform

Course Objectives

With utmost desire to achieve the aims set out above, the course has some set of objectives as demonstrated in all units of the course. Each unit has its own objectives which are always included at the beginning of every unit to assist the student in appreciating what he or she will come across in the study of each unit to facilitate his or her better understanding of the course CSS 356: Traditional and Informal Mechanisms of Crime Control. The student is, therefore advised to read these objectives before studying the entire unit(s). Thus, it is helpful to do so. You should always look at the unit objectives after completing a unit. In this way, you can be sure that you have done what was required of you by the unit. Stated below are the wider objectives of this course as a whole. By meeting these objectives, you would have achieved the aims of the course as a whole.

At the end of the course, you should be able tunderstand:

- The definitional concepts of crime
- The dichotomy if any, between formal and informal mechanism of crime control
- The various traditional means of combating crime

- The factors hindering traditional means of crime control mechanism
- How government can compliment efforts of traditional (informal) mechanism of crime control with the formal means.
- A thorough knowledge of tradition methods of crime control
- Literature review and case studies over the years as related to this discourse.

Working through this course

In completing this course, the student is required to study the whole units, and try to read all (or substantial number of) the recommended textbooks, journals and other reading materials including electronic resources. Each unit contains self assessment exercise (s) which shall be examined.

The time of the final examination and venue shall be communicated to all the registered students in due course by relevant school authorities – study centre management. Below are the components of the course and what you are required to do.

Course materials

Major component of the course include:

1. Course Guide
2. Study units

3. Textbooks
4. Assignments files
5. Presentation schedule

It is incumbent on every student to get his or her own copy of the course material.

You are also advised to contact your tutorial facilitator. If you have any difficult in getting any of the text materials recommended for your further reading.

Study units

In this course there are five modules which contain up to seven sub-units each and the major headings are:

Module 1 Traditional and Informal mechanisms of Crime Control: Definitions and conceptual issues

Module 2 Relationship among Control, justice, And Law.

Module 3 Traditional and informal mechanisms of crime control: interfacing Indigenous and English Policing (control) in Nigeria.

Module 4 Traditional and informal mechanism of crime control

Module 5 Traditional/informal mechanism of crime control and peace building

Course material

The first module consists of five units, which will expose the student or reader to the conceptual definition of traditional mechanism of crime control and various alternative conceptions of social crime control. Connections and disconnections with the formal mechanisms system. In this course we shall dedicate the second module to explore various concepts, their distinguishing definitions, formal and informal mechanism, opportunities to strengthen and grow native African mechanisms of crime control. In the third module, we shall beam our search light on indigenous and English policing (control) in Nigeria.

Module three covers factors enabling indigenous social control in a modern African state, Relationship between indigenous and foreign law enforcement in postcolonial Africa, security maintenance, Crime prevention and general law enforcement procedures. The fourth module highlights various mechanism used by traditional authority in combating crime, among which are divination, age-grade system, deity –"Ayelala" consultation, among others. Finally, the fifth and final module explore the contribution of traditional/informal mechanism in combating crime, supporting judicial system re-construction etc.

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ASSIGNMENT FILE

In this file, you will find the necessary details of the assignments you must submit to your tutor for assessment. The marks you get from these assignments will form part of your final assessment in this course.

ASSESSMENT

There are two aspects to the assessment of the course. First are the tutor-marked assignment; and secondly there is the written examination. In tackling the assignment, you are expected to apply information and knowledge acquired during this course. The assignments must be submitted to your tutor for assessment in accordance with the deadlines stated in the Assignment file. The work you submit to your tutor for assessment will count for 30% of your total course work. At the end of the course, you will need to sit for a final three-hour examination. This will also count for 70% of your course mark.

TUTOR-MARKED ASSIGNMENTS (TMA)

There are twenty tutor-marked Assignments in this course. You need to submit four assignments out of which the best three will be used for your assessment. These three assignments shall make 30% of your total course work. Assignment question for the units in this course are contained in the assignment file. You should be able to complete your assignments from the information and materials contained in your set textbooks, reading and study units. However, you are advised to use other references to broaden your view point and provide a deeper understanding of the subject. When you have completed each assignment, send it together with TMA (Tutor-marked Assignment) file to your tutor. Make sure that each assignment gets to your tutor on or before the deadline. And in case of being unable to complete your work on time, contact your tutor or better still your study centre manager (overseer) before the submission deadline of assignments elapses to discuss the possibility of an extension.

FINAL EXAMINATION AND GRADING

The final examination for CSS: 356 shall be of three hours duration and have a value of 70% of the total course grade. The examination shall consist of questions which reflect the type of self-testing. Practice exercises and tutor-marked problems you have come across. All areas of the course will be assessed. You are advised to revise the entire course after studying the last unit before you sit for the examination. You will find it useful to review your tutor-marked assignments and the comments of your tutor on them before the final examination.

COURSE MARKING SCHEME

This table shows how the actual course marking is broken down.

ASSESSMENTS	**MARKS**
Assignment 1-4	Four assignments are to be submitted, out of which the three best shall be considered at 10% each, making 30% of the overall scores
Final Examination	70% of overall course marks.
Total	100% of Course Marks

Table 1: Course Marking Scheme

Course Overview

The table brings together the entire units contained in this course, the number of weeks you should take to complete them, and the assignments that follow them.

Unit	**Title of Work**	**Weeks Activity**	**TMA**
	Course Guide	1	

1	Traditional & Informal mechanism of crime control, definition & conceptual issues.	1	Assignment 1
2	What is traditional mechanism system	2	Assignment 2
3	Beyond simplicity, romantic & essential of conception of tradition	2	Assignment 3
4	An alternative conception of crime control mechanism	3	Assignment 4
5	Connection & disconnection with the formal mechanism system	4	Assignment 5
6	What is the nature of relationship among control, Justice and Law	5	Assignment 6
7	Philosophical & pragmatic component of traditional means of crime control	6	Assignment 7
8	Opportunity to strengthen and grow native African mechanism of crime control	6	Assignment 8
9	Formal versus Informal social control	7	Assignment 9
10	Traditional versus Informal mechanism of crime control, native versus English control	7	Assignment 10
11	Factors affecting Indigenous social control	8	Assignment 11
12	Relationship between indigenous	9	Assignment 12

	& foreign Law		
13	Pattern of indigenous security maintenance	10	Assignment 13
14	Ayelala – origin & functions	11	Assignment 14
15	The judiciary & Ayelala challenge	11	Assignment 15
16	Justice and prevention of violence	12	Assignment 16
17	The contribution of traditional mechanism of crime control	13	Assignment 17
18	Contribution of traditional justice	14	Assignment 18
19	Social trust and community re-integration	15	Assignment 19
20	Supporting Judicial system reform re-construction	16	Assignment 20

PRESENTATION SCHEDULE

The presentation schedule included in your course materials gives you the important dates for the completion of tutor-marked assignments and attending tutorials. Remember you are required to submit all your assignments by the due date. You should guard against falling behind in your work.

HOW TO GET THE BEST FROM THIS COURSE

In distance learning programmes, the study units replace the University lectures. This is one of the great advantages of distance learning; you can read and work through specially designed study materials at your own pace, and at a time and place that suit you best. Think of it as reading the lecture instead of listening to the lecturer. In the same way that a lecturer might set you some reading to do, the study units tell you

when to read your set of books or other materials. Just as a lecturer might give you an in-class exercise, your study units follows a common format. The first item is an introduction to the subject matter of the unit and the course as a whole. Next is a set of learning objectives. These objectives shall tell you to know what you should be able to do by the time you have completed the unit. You should use this objective to guide your study. When you have finished the units, you must go back and check whether you have accepted the objectives. If you have a habit of doing this you will significantly improve your chances of passing the course. The main body of the unit guides you through the required reading from other sources.

Reading Section

1 Read this Course Guide thoroughly

2 Organize a study Schedule. Refer to the 'Course overview' for more details. Note the time you are expected to spend on each unit and how the assignments relate to the units. Whatever method you chose to use, you should decide on and write in your own dates for working on each unit.

3 Once you have created your own schedule, do everything you can to stick to it. The major reason students fail is that they get behind in their course work. If you get into difficulty with your schedule, please let your tutor know before it is too late for help.

4 Turn to unit 1 and read the introduction and the objectives for the unit

5 Assemble the study materials, Information about what you need for a unit is given in the 'Overview' at the beginning of each unit. You will almost always need both the study unit you are working on and one of your set books on your desk at the same time.

6 Work through the unit. The content of the unit itself has been arranged to provide a sequence for you to follow. As you work through the units you will be instructed to read sections from your set books or other materials. Use the unit to guide your reading.

7 Review the objectives for each study unit to confirm that you have achieved them. If you feel unsure about any of the objectives, review the study materials or consult your tutor.

8 When you are confident that you have achieved the objectives of a unit, you can then start on the next unit. Proceed unit by unit through the course and try to pace your study so that you keep yourself on schedule.

9 When you have submitted an assignment to your tutor for marking, do not wait for its return before starting on the next unit, keep to your schedule. When the assignment is returned, pay particular attention to your tutor's comments, both on the tutor-marked Assignment form and also what is written on the assignment. Consult your tutor as soon as possible if you have any questions or problems.

10 After completing the last unit, review the course and prepare yourself for the final examination. Check that you have achieved the unit objectives (listed at the beginning of each unit) and the course objectives (listed in this Course-Guide).

FACILITATORS/TUTORS AND TUTORIALS

There are between eight (8) and twelve (12) hours of tutorials provided in support of this course. The dates, time and venue of these tutorials shall be communicated to you. The name and phone number of your tutor will be made available to you immediately you are allocated a tutorial group. Your tutor will make and comment on your assignments, keep a close watch on your progress and on any difficulties you might encounter and provide assistance to you during the course. You must mail your tutor marked assignments to your tutor well before the due date (at least two working days are required). They will be marked by our tutor and returned to you as soon as possible. Do not hesitate to contact your tutor by phone, e-mail, or discussion board if you need help. You will definitely benefit a lot by doing that. Contact your tutor if:

* You do not understand any part of the study units or the assigned readings;

* You have difficulty with the self-test or exercises; and;

* You have a question or problem with an assignment, with your tutor's comment on an assignment or with the grading of an assignment.

You should make an effort to attend the tutorials. Thus, it is the only opportunity you have to enjoy face to face contact with your tutor and to ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefits from the course tutorials, prepare a question list before attending them. You will learn a lot from participating in discussion actively.

SUMMARY

CSS 356 aims to expose you to issues, ideas and methodologies to Traditional and Informal mechanisms of crime control as well as various techniques and technological advancement in the management of crime and Social and Cultural Issues in Response and Crime prevention. As you complete this course, you should be able to answer the following questions:

1. Briefly write short notes on the followings:

a) Traditional mechanism of crime control

b) Informal means of crime control

c) Legal means of crime control

d) Formal means of crime control

2. Summarize briefly the various concepts in the course

3. Considering the submission of this unit, how would you rate the traditional, informal mechanisms of crime control?

4. Itemize the six points as identified and stated in this unit to justify the need to strengthen Traditional, informal mechanisms of crime control as against the Western, formal approach.

5. Critically analyze formal and informal mechanisms of crime control.

6. Having read this unit, what is your opinion as regards revamping traditional mechanism of crime control in modern African State.

7. Enumerate factors that can enhance the prevalence of indigenous mechanism of crime control over formal mechanism.

8. Suggest ways in which the federal government of Nigeria can bridge both Informal and formal mechanism of crime control

9. Present an overview of your understanding of informal/traditional mechanism of crime control

10. "Traditional/informal mechanism and formal mechanism of crime control", which one do you consider most effective? Substantiate your claims.

Finally, you are advised to read the course material appreciably well in order to prepare fully and not to be caught pants down by the final examination questions. So, we sincerely wish you success in your academic career as you will find this course (CSS 356) very interesting. You should always avoid examination malpractices!

MODULE 1

INTRODUCTION

UNIT 1 Traditional and Informal mechanisms of Crime Control: Definitions and conceptual issues

CONTENTS

1.0 INTRODUTION

Traditional and informal mechanisms of crime control are a very pertinent aspect of studies in crime and delinquent acts as a social menance in the society. The various discourses that will be examined in this unit, to introduce you to various concepts, definitions, as well as the different connections and disconnections between “informal and traditional mechanism of crime control and formal means of

combating crime". It ends by summarizing the different dichotomies at play on that topic.

2.0 OBJECTIVES

It is hoped that by the end of this unit, you should be able to:

- Define what is meant by Traditional and informal Mechanisms of crime control.
- Understand what mechanism is all about, to be specific.
- Identify the dichotomies between formal and informal mechanisms of crime control.
- Describe the followings:
    - Informal mechanism
    - Informal versus traditional mechanism
    - Traditional versus indigenous versus customary and local justice systems
- To understand and appreciate both traditional and formal mechanism of crime control and be able to justify or proffer solution to how this should apply to African setting.

3.1 TRADITIONAL AND INFORMAL DEFINITIONS AND CONCEPTUAL ISSUES

The study of traditional informal mechanisms of crime control is marked by a panoply of terms such as “traditional,” “customary,” “indigenous,” “informal,” “non-state,” “local,” “community,” “popular,” “participatory,” often conflated in both discourse and practice. In some instances they essentially seek to capture the same social phenomenon, while in others their meanings are quite different. This unit explains those specificities and the reasons for the choice of the expression “traditional and informal mechanisms of crime control” as the most encompassing. It also explores further, different ways of understanding the notion of “tradition” as well as the different connections and disconnections between “informal” and “formal” systems. It ends by summarizing the different dichotomies at play on that topic.

Informal Mechanisms

Informal mechanisms refer to “dispute resolution mechanisms falling outside the scope of the formal justice system. The term does not fit every circumstances as it’s been describe. Such as (traditional, indigenous, customary, restorative, popular), and it is difficult to use a common term to denote the various processes, mechanisms and norms around the world. The term informal justice system is used here to draw a distinction between state-administered formal mechanism systems and non-state, administrated informal mechanism.” (Richard L. Abel, 1982).

Another way to define informal mechanism is to refer to its key attributes. It is said to be unofficial (dissociated from state power) non-coercive (dependent rather than force), non-bureaucratic, decentralized, relatively undifferentiated, and non-professional; its substantive and procedural rules are imprecise, unwritten, democratic, flexible, ad hoc, and particularistic. No concrete informal legal institution will embody all these qualities, but each will exhibit some. (Abel; 1982).

The main problem with qualifying a justice mechanism as “informal” is that the term may imply that it is simplistic, inferior, or ad hoc, lacking in substantive or procedural guidelines. In fact many of these justice mechanisms apply a highly developed system of rules and follow well-established procedures. (Huyse & Mark, 2008)

Informal vs. traditional Mechanism

There is an important distinction to be made between “traditional” and “informal.” Some “traditional” mechanisms in post-conflict settings are not “informal” in the sense of being outside the legal framework of the state, but are instead incorporated into the formal justice system. A clear example of this are the *gacaca court*s in post-genocide Rwanda, which, though conceptually based on pre-colonial customs of dispute resolution, applies codified state law.

An “informal” mechanism system is not necessary a “traditional” one either, in the sense of being rooted in the history of a particular community or locally. For example, the *Rondas Campesinas* in rural peru are “informal” institutions, meaning existing outside the legal framework established by the state. However, they were created in the 1980s to respond to problems of cattle rusting, and thus were not rooted in long term history or “traditional”

Traditional versus Indigenous versus customary and local justice systems

Four terms are used extensively, and often times inter-changeable in discussions on traditional or formal mechanism in post-conflict societies: “traditional,” “indigenous,” “customary,” and “local.” However, it is important to highlight the suitable, yet significant distinctions between these terms as well as linkages between the realities they intend to encapsulate.

Traditional Justice

Generally speaking, peace-builders consider this to be traditional if they have been practiced for an extended period and have evolved within a society rather than being the product of external importation. A key publication on traditional/informal mechanism in sub-Saharan Africa defines traditional mechanism systems as “non-state systems which have existed, although not without change, since pre-colonial times and are generally found in rural areas. (PRI, 2000). This definition can be applied to other contexts, albeit with some adjustments due to the differences in historical trajectories. In all

cases, it is important to note that the term “traditional” does not mean static or unchangeable, but rather refers to mechanisms which, by essence, are susceptible to almost continuous change.

Colonizing authorities and processes of modernizing, civil war or genocide, in particular have had deeply disturbing effects on the original institutions (Huyse, 2008). So, the notion of “tradition” has to be understood in a much flexible way than the customary use of the word might imply.

Indigenous Justice

Closely related to traditional mechanism is the term “indigenous”. In some of the literature on traditional justice in post-conflict societies, “indigenous” is employed as a synonym to “traditional,” meaning a justice practice that is rooted in the historical experience of a particular locality. In some parts of the world (for example, in central and South America) “indigenous” has a more specific meaning, referring to the ethnic groups who lived there prior to European colonization. In some contexts, therefore, it may be more appropriate to speak of **“endogenous”** (defined as “arising from within” a particular community or locality) rather than “indigenous” justice mechanisms.

Customary justice

Traditional mechanism is often conflated with the customary law that is; how it applies: conventionally understood as consisting of a community's historically generated rules and norms. Customary laws are usually unwritten, passed down orally from generation to generations and "derived from the mores, values and traditions of indigenous ethnic groups (Kane et al… 2005). Here again, some analysis have stressed the strong influence of colonization. In some instances, so called "customary law" may have been essentially invented by colonial rulers and their local counterparts, to "order" colonized communities according to colonial imperatives (Mahmood 1996). The essentialist notion of organically generated customs may thus be more of a figment of our imagination and the product of colonialism than a historically accurate depiction of "customary law".

Local justice

Some scholars and practitioners prefer to use the term "local" because of its apparent neutrality (in particular in comparison to "traditional" and "informal"). Others see a pragmatic value in this term. By using the term local, they suggests immediate peripheral meaning both temporally and spatially, scholars and practitioners seek to bypass the thorny debate about what is "traditional." The key element, scholars' view, is to observe what justice practices are being carried out by people in a particular post-conflict community.

Despite the merits of this approach, the term “local” seems to lack precision. In particular, it does not tell us whether a non-state justice practice is informal, traditional, and the nature or degree of its association with the formal justice system. In addition, in the language of interventional law, “local” may mean national or state law, whereas nationals may see “local” as referring to the community.

Self-Assessment Exercise 3.1

Explain briefly the following terms: Informal, Traditional, Indigenous, Customary and local systems. Is there any difference?

3.2 What are “traditional” mechanism systems?

Traditional mechanism and broader social functions

The term “traditional mechanism” should not be understood in a narrow juridical sense to mean only the administration of justice. Traditional mechanism in post-conflict settings encompasses a wide array of social goals including accountability, truth-telling, reparation, and reconciliation. In contexts where there is no clear separation between justice (retribution), reconciliation (restoration), and healing, these social goals are seen as inextricably linked together and part of a whole. “Rather than focusing on the particular rules applied in situations of dispute, this perspective examines the ways social groups conceive of ordering, of social relationships, and of ways of determining truth and justice. Law is not simply a set of rules exercising coercive power, but a system of thought by which certain

forms of relations come to seem natural and taken for granted, modes of thought that are inscribed in institutions that exercise some coercion in support of their categories and theories of explanation.(Merry,2008).

As such, traditional justice in post-conflict societies is equally concerned with issues of community reintegration, the peaceful coexistence of former antagonists, and the psychosocial recovery of war survivors. In sum, “traditional justice” could very well mean “traditional approaches to justice and reconciliation,” “community-based/level reconciliation, “ or “indigenous conflict resolution.” Moreover, traditional and informal justice systems are often broader forms of governance that go beyond dispute resolution as their leaders and operators may be also involved in the day-to-day functioning of their village or community.”

Self-Assessment Exercise 3.2

What are traditional mechanisms?

3.3 Simplistic, romantic and essentialist conceptions of “*tradition”*

Traditional practice may be improperly romanticized as somehow intrinsically benign, monolithic in construction, and conducive to post-conflict reconstruction. However, customary laws “have undergone their own troubles, history and evolution, and their content may not necessarily be uniformly acceptable to all citizens or communities in the country.” (Rama. 2002). Contending interpretations of traditional mechanism may exist, especially in terms of its content, applicability, and objectives.

As a consequence of the varied interpretations of traditional justice, the legitimacy of “traditional” mechanisms may be called into question and serve as a central impediment to the proposed revitalization of traditional mechanisms after the violence. This may be particularly acute when extended or repetitive periods of large-scale violence have profoundly affected the society and community fabric. The dislocation of people from their homes and communities may have disrupted normal patterns of social interaction, notably disrupting the transmission of cultural knowledge and social practices to youth and children. Some traditional community leaders may no longer command respect and authority because of their perceived complicity in the war.

Some insiders and outsiders may have a tendency of “idealizing a more peaceful ‘traditional’ past or wish to reintroduce traditions that no longer exist or have been used, misused, and transformed by entrepreneurs of violence.” Additionally, in the process of rediscovery and adaptation, “traditional” mechanisms of crime control undergo significant changes. What are labeled ‘returns to tradition’ may in fact be inventions, recalled or resurrected ideas layered on and informed

by new information. They should be understood as such and not romanticized. It may be helpful to instead think of “tradition” as similar to any other sphere of social life and thus inherently subject to power struggle. Therefore, careful examination of the resurgence of traditional mechanisms should be carefully assessed, particularly in terms of who benefits from and who is disadvantaged by such a proposal. (Roberta & Beatrice, 2007).

The current fascination with traditional justice in some quarters of the international community carries another risk. Saying that some people in some post-conflict societies are somehow naturally inclined towards non-judicial mechanisms of justice may be a way to suggest, however implicitly, that “they are not like us” and to paint them as essentially different, with different ways of interpreting the world and of ordering their lives. Though human and cultural diversity is a fact of life, there is a danger of creating double-standards with regard to the needs and aspirations of people in post-conflict societies. As Allen (2007) writes in the context of northern Uganda, All the talk about the Acholi forgiving those among them who killed and mutilated can be seen to reinforce the perception that they are not like other people and have their own ways of managing themselves.

Self-Assessment Exercise 3.3

Evaluate traditional mechanism of crime control, both in the past and the present.

3.4 An alternative conception of tradition.

Moving beyond the simplistic, romantic, and essentialists traps, an alternative conceptualization is one that emphasizes that traditions are dynamic-constantly changing and *being changed* according to evolutions in the societies in which they are embedded. As noted in an insightful ethnographic study of northern Ugandan traditional mechanism practices: These practices, far from being dislocated in a past that no longer exists, have always continued to be situated socially. They are called upon and performed to address present concerns. Of course, like any culturally informed practice, with time they shift in meaning and appearance." In other words, innovation is part of every cultures reality, and…borrowing and grafting ideas from the outside and reshaping old concepts to new experiences are also important local strategies.

The notion of "invented tradition"

"Invented tradition' is taken to mean a set of practices, normally governed by overtly or tacitly accepted rules and of a ritual or symbolic nature, which seek to inculcate certain values and norms of behaviour by repetition, which automatically implies continuity with the past. In fact,, where possible, they normally attempt to establish continuity with a suitable historic past… However, in so far as there is such reference to a historic past, the peculiarity of invented traditions is that the continuity with it is largely fictitious. In short, they are responses to novel situations, or which establish their own past by quasi-obligatory repetition." Eric Hobsbawn, (1985)

Self-Assessment Exercise 3.4

Innovation is part of every culture's reality to combating crime. Do you agree?

3.5 "Neo-traditional" justice mechanisms and conflict crimes

In post-conflict settings, perhaps the most significant transformation is that traditional mechanisms, which were historically used to address ordinary disputes and crimes at the local level, are now used to address "serious crimes" committed in a war context. In this sense, these traditional practices are being modified and adapted to address unique post-conflict realities. Accordingly, it may be more accurate to refer to them as "neo-traditional" post-conflict traditional justice instruments as they "are simply modeled on old institutions, with changes made to make them relevant to contemporary circumstances." Some scholars and practitioners also use the term "tradition-based" to convey the same idea. Most of the experiences in which some forms of traditions have been recalled and adapted to answer post-conflict settings correspond to that description; for example, *gacaca* in Rwanda, community-based reconciliation processes in East Timor, and *mato oput* and other traditional rituals in northern Uganda.

Self-Assessment Exercise 3.5

Briefly explain what is meant by "Neo-traditional" justice mechanism to address conflict crimes.

4.0 Connections and disconnections with the formal mechanism system

Formal mechanism of crime control can be defined as a system that "involves civil and criminal justice and includes formal state-based justice institutions and procedures, such as police, prosecutors, courts, and custodial measures. (Wojowoska, 2008). Thus, the use of the adjective "informal" serves to make the contrast with the formal and formalistic character of state justice institutions. But at least some of the mechanisms in questions acquire formal attributes once they are more or less part of the state justice system.

An increasingly popular term among practitioners and policymakers is ***non-state justice system*** *(or* ***non-state justice and security system (NSJS)***)**,** which is defined as "all systems that exercise some form of non-state authority in providing safety, security and access to justice. This includes a range of traditional, customary, religious and informal mechanisms that deal with disputes and/or security matters. The relationship between NSJS and the state vary considerably. Systems include community-based practices that are relatively isolated from the state, systems fostered by non-governmental organizations (NGOs), and systems set up by the state outside the formal justice system for a specific purpose. Even where not officially sanctioned to do so, in practice, the formal justice sector frequently delegates categories of cases to informal justice systems or relies upon and accommodates outcomes reached through them.

There is a well-established academic sub-discipline known as ***legal pluralism***, which is concerned with the study of contexts where a multiplicity of legal systems or practice exists.

Legal pluralism is defined as “a situation in which two or more legal systems coexist in the same social field; “(Wojowoska, 2008) more specifically, it explores the linkages between formal and informal/traditional justice systems. It is worth noting that “the term informal justice system may in some cases not capture the extent to which the state is involved in a particular justice system as this line may often be blurred. In many countries, communities that apply customary laws are recognized and regulated by the state either by law, regulations or by jurisprudence, and are therefore ‘semi-formal.”

Self-Assessment Exercise 4.0

Differentiate between formal mechanism and legal pluralism of crime control, if any?

5.0 Conclusion and summary the various dichotomies

Santos (2006) who has published prolifically on issues related to law and globalization, legal pluralism, multiculturalism, and human rights, offers a clear and concise way of summarizing the various dichotomies that populate this field of study and practice: “The ***official/unofficial variable*** results from the political-administrative definition of what is recognized as law or the administration of justice, and what is not. In the modern state, the unofficial is everything that is not recognized as state-originated. It may be prohibited or tolerated; most of the time, however, it is ignored. The

formal/informal variable relates to the structural aspect of the legal orders in operation. A form of law is considered formal when it is dominated by written exchanges and norms and standardized procedures, and, in turn, is considered informal when it is dominated by orality and common language argumentations. The ***traditional/modern*** variable relates to the origin and historical duration of law and justice. a form of law is said to be traditional when it is believed to have existed since time immemorial, when it is impossible to identify with any accuracy the moment or agents of its creation. Conversely, a law is said to be modern when it is believed to have existed for a shorter period of time than the traditional and whose creation can be identified as to time and/or author."

6.0 Tutor-marked Assignments

1. Briefly write short notes on the followings:

e) Traditional mechanism of crime control

f) Informal means of crime control

g) Legal means of crime control

h) Formal means of crime control

2. Summarize briefly all the various concepts/dichotomies discussed in this unit

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MODULE 2

INTRODUCTION

Unit 2 Relationship among Control, justice, And Law- the dichotomies discussed

Contents

1.0 INTRODUCTION

Having enunciated various concepts and their meanings regarding traditional and informal mechanisms of crime control in unit one, subsequently.

In this unit, the contextual meaning of the three central concepts (i.e. control, Justice, and Law) is to be arranged progressively to emphasize and develop meaningful conception and appreciation of the various mechanism being employed traditionally and informally as a weapon of combating crime. In addition, this unit illustrates the need for African societies to advocate, promote and expand the uses of their indigenous justice and social control philosophies and systems despite their respective colonial experiences. This section equally uses the Igbo (Nigeria) as a case study. Igbo systems of justice and more emphatically “social control as an illustrative scientific evidence to demonstrate that the indigenous Igbo social mechanisms of crime control, like many other Native African social control mechanisms of crime control, remains potent for social control in Africa.

2.0 OBJECTIVES

It is hoped that by the end of this unit, you should be able to:

- Ascertain differences among control, Justice and Law

- Be well grounded about the philosophical and pragmatic components of Native African versus western thoughts on social control, Justice and Law
- Critically analyze the relationship between formal and informal mechanism of crime control.

3.1 Relationship Among Control, Justice And Law

The three central concepts in this unit (control, Justice, and Law) have been arranged progressively to emphasize the traditional Igbo and other native African outlook on life regarding specifically the ideals of personal or self-control and conformity with group and societal norms of behavour as well as fairness in efforts initiated to respond to breaches and alleged breaches of a society's norms. It seems that there is great logic in the African view of the progressive relationship among control, justice, and law, as follows.

The control or lack thereof of a person or group is to be found first and foremost in each person (*self-control)*. Thus, a person may or may not conform to societal expectations based on the person's inherent or learned dispositions and convictions. Some inherent dispositions are a part of the biological, psychological, and other natural traits of a person, whereas other dispositions are learned, such as by the observation of traditions, cultures, customs, and practices. However, self-control is, no doubt, the basic form of control. African societies, like many others, primarily expect persons to control themselves, except a person is for instance mentally

deficient. If a person is mistaken in an action or omission or otherwise does not have control of the relevant situation, such as in the case of an accidental homicide, he or she is not necessarily divested of all liability. Instead, the liability may be lessened. If self-control is absent or insufficient, *private control* by vital others, such as parents, guardians, siblings, friends, peers, community elders, cultural and religious authority figures of community, institutions, and other societal structures, become elevated in importance for overall control in society.

Where self-control and other private (not official modern state government) control by vital others are incapable of ensuring conformity with societal expectations, public (not official modern state government) control by others becomes relevant. *Public control* involves group and community (not official modern State government) organs for control, such as traditional community police or vigilante services, village courts, and masquerades that enforce village, unofficial court judgments. Because public control is the first attempt to have an objective institution examine an issue and find an acceptable and progressive solution, the concept of "justice" becomes relevant because the issue is likely to involve opposing sides or parties.

To the traditional Igbo or other native African, to do "justice" is to do right based on the totality of the applicable information with a view to advancing the relevant society and ensuring the well being of the members as a *collective group.* The emphasis on the collective group may be inconsistent with members' rights *as individuals*. Thus, the well being of an individual, such as a party to a dispute, mostly

assumes a secondary consideration to the community's well being. Individual rights, while recognized and enforced, do not generally supersede the collective rights. In fact, it is doubtful that an individual right would be elevated to the same level of importance as a collective right or interest. This necessarily means that "justice" in Native Africa encompasses more of "fairness to parties with a view to a stronger society" than "fairness within the ambits of the law".

"Law" in traditional Igbo and other African societies assumes a wide dimension and should be understood, interpreted, and applied as such, even if such a definition conflicts with the Western idea. "Law" in traditional Africa includes enforceable traditions, customs, and laws. The term covers the expressed commands of political sovereigns or superiors, such as the *Eze* in Igbo, the *Alafin* in Yoruba, and the *Tor* in Tiv (Igbo, Yoruba, and Tiv are nations in present-day Nigeria), and other kings, chiefs, and title holders in African societies. Apart from the expressed commands, there are implied dos and don'ts contained in each society's body of traditions passed down from one generation to another as well as customs in contemporary use in each society. Thus, African "customary law" (as the West prefers to label the African indigenous laws), which is largely unwritten, is no less "law", even in the postcolonial world. Many contemporary African societies, particularly the small, rural, close-knit communities (most of Africa's human population lives in such communities), continue to place a lot of emphasis on traditions, customs, and other unwritten laws in their interpretations of the concept of "law".

In the pre-colonial era, African laws (traditions, customs, and laws) were hardly written. However, the laws were fairly easily ascertained and properly applied to issues as necessary mainly because of the levels of honesty and integrity among the individuals and groups that had the duty to ascertain and apply the relevant laws. Thankfully, the advent and commonality of writing in postcolonial Africa obviates the need to continue to rely on the law. Written African laws should greatly assist an effort to promote and advance African indigenous laws.

Thus, “law” (written or unwritten) in postcolonial Africa should include credible relevant traditions, customs, and commands of political sovereigns or superiors. It is necessary to emphasize that the commands of political sovereigns or superior envisaged here are those that emanate from legitimate, tradition-based leaders that are generally supported and accepted by the locals. Thus, in a situation whereby government loyalists are appointed as traditional rulers. This would not qualify such an appointee as a legitimate, tradition-based leader. Otherwise, the locals would ignore commands given by such an appointee.

Self-Assessment Exercise 3.1

Briefly explain the contextual meaning of the followings: (a) Justice (b) Law and (c) Social control.

3.2 Philosophical And Pragmatic Components Of Native African Versus Western Thoughts On Social Control, Justice And Law

Theoretically and practically, the bases of African and Western conceptions of control, justice, and law differ in important respects. As to be expected, the African and Western world views are founded on the respective cultures, histories, religious beliefs, practices, and other life ways of Africans on the one hand, and those of Westerners, on the other hand. Generally, the life of an African – as that of a Westerner – is predicated on commonly accepted tenets of source of life, living, and coexistence with others in society. The African and Western thoughts on, and applications of, the control, justice, and law themes to advance society's conditions reflect the differing and sometimes common codes of belief.

A major feature of the Native Igbo and other African justice systems is that the mechanisms of justice are aimed primarily at peacemaking. The Native African systems are designed necessarily begins with peaceful coexistence between individual members of the society. Peace between individual members and smaller groups will add up to a peaceful society. Thus, peacemaking is the main thrust of the Native African systems of control, justice, and law. Contrast the English-style justice system, which tends to emphasize the allocation of rights (individual and small group rights) between disputants. Thus, the Native African systems are designed to redress wrongs, fine-tune claims, preserve norms, and prevent the break-up of interpersonal and group relationships (Nzimiro, 1972). Based on this, an Okigwe (Igbo) elder, who witnessed the changes the British imperialists,

brought to the Igbo system states, in reference to the differences between Igbo and English justice systems, that following the advent of the British to the Igbo justice disappeared (Afigbo, 1972).

The other elements composing the Native Igbo and other African control, justice, and law include consensus among the community members. Most aspects of control, justice, and law are rooted in the members' general consent to the control, justice, and law principles, as well as the modes and agents for effectuating the principles for the greater public good. Thus, traditions, customs, and laws are usually developed and made with the consent, and to the satisfaction, of most community members. The traditions, customs, and laws cover procedural as well as substantive facets of control, justice, and law in society. The community members' sense of involvement and worth motivate the members to accept the law making, law application (case management), and enforcement features of control, justice, and law. Consensus and general acceptance are two crucial aspects of the Native African internal and external relations. Most Native African institutions are based on democracy in which efforts are made to achieve consensus on an issue before a verdict is adopted. The consensus and general acceptance are based on African's faithfulness to their history, and the fact that they continue to borrow norms, rules, regulations, and laws. Previous generations manifests this faithfulness.

Perhaps, it is necessary to expatiate further on the "consensus" and "general acceptance" concepts as they apply to the Native African institutions, especially on the issues of control, justice, and law. A fitting explanation of the "consensus" and "general acceptance"

themes is that they emphasize that control, justice, and law in Native Africa are usually based on consented, harmonious management of issues. This, of course, does not mean that every community member consents to every applicable law or the judicial management of every issue. As is common in most instances where different personalities intermingle, there are sometimes opposing views, disagreements, and conflicts. Such interpersonal and group variances, if not properly and satisfactorily checked, would grow into deep-seated disputes. The ingeniuty of Native African systems of control, justice, and law is that the systems recognize the fundamentally critical need for a system to inspire the confidence of most members of the society to which it applies. Allowing the members significant roles in the system's process effectively inspired and maintains the confidence. With the consent and general acceptance by most of the members of a society, the few members that unreasonably disagree with the consent and generally accepted principles are regarded and treated as deviants. With only a few deviants, the society will likely be stable and secure because most of its members genuinely identify and agree with, and support, the consented and generally accepted principles (Okereafoezeke, 2001).

Illustration of the Native African faithfulness to their history, on the basis of which they continue to borrow norms, rules, regulations, and laws from previous generations, are common. In Igbo, for example, *ana, ani,* or *ala* (land) is an important factor in interpersonal and group relations. A person who is faithful to the land does not disrespect it by selling it. In Native Igbo, as in Native Yoruba (Nigeria) (see Johnson, 1970, particularly p. 95), land is not sold. The Igbo, Yoruba, and other African nations highly respect land. Thus, a person

who makes a claim and swears on land without suffering negative consequences is regarded as having told the truth. Nzimiro (1972; 122), based on a study of four Igbo communities, namely Abo, Oguta, Onitsha, and Osomari, describes and illustrates the settlement of a land case in Igbo by means of oath taking.

Further important characteristics of the Native African justice systems include the fact that case management organs are close to the citizens. Many members of the case management organs are either natives of the relevant community or they would have been residing there for a long time. The other important characteristics is that the Native justice system has credibility with the locals. The system's credibility is derived partly from the integrity of the individuals and groups that perform various functions to achieve justice. Thus, in traditional Igbo for example, different individuals, groups, and organizations (including the age grades of the young and old, the women and male groups, etc.) perform different functions toward the societal goals of control, justice, and law. Depending on the issues involved in a situation, the young or elderly community members, as the case may be, may play a more prominent role with a view to maintaining or achieving peace for the community and addressing the parties' concerned as much as possible.

Thus, the Igbo usually rely on the elders of each community to manage grievances and conflicts and to settle disputes. Achebe's (1959) description of the preface to a trial in Umuofia (Igbo) illustrates the elders' role in judicial proceedings in Native Africa. Achebe (opcit. 83) writes: "It was clear that the ceremony was for men… The titled men and elders sat on their stools waiting for the trials to begin".

Achebe continues (opcit. 86-87) by noting that the trial procedure allows each side to present its case beginning with duly saluting and acknowledging individuals to whom the salutes and acknowledgments are due. Ottenberg's (1971, 246-303) study of the Afikpo (Igbo) and Nzimiro's (1972) study of the Onitsha (Igbo) area find that community elders, along with the traditional ruler of each community, are the judges in judicial proceedings. Isichei (1976, 21-24) exemplifies the role of the elders in case management in Owerri (Igbo). Some elders may serve as advocates in the proceedings. The policy implementation (enforcement) is often the responsibility of several groups and institutions, such as the age grades of the youth and the *mmanwu* (masquerade) institution. The research findings cited here agree with the situation in many African societies.

In colonial and postcolonial Africa, official (modern State governmental) control, justice, and law have unjustifiably shifted from the Native systems to the foreign/foreign-style (Western) systems. The shift is a consequence of the imperialist structures and the neo-colonial mentality that the European colonizing forces wrought on the African continent.

Self-Assessment Exercise 3.2

Juxtapose the assertions of indigenous, traditional, and informal mechanism of social control of crime with that of Western postulations as posisted in this unit

3.3 Opportunities To Strengthen And Grow Native African Mechanisms of Crime Control

It is safe to state that Africans widely use Native African systems and notions of social control mechanism in the management of civil and criminal grievances, conflicts, and disputes [see the Nigerian and Sierra-Leonean examples in Okereafoezeke (2002) and Thompson (1996), respectively]. Evidences of this situation abound. A few illustrations are cited in this unit. The Native African systems either already cover or have the potential to cover all conceivable issues, whether such issues concern crimes, civil relations, or other. There is no stronger argument for Africa's official governments to champion, support, and advance the Native systems of control over their Western-based counterparts than that an overwhelming majority of Africans continue to live their lives according to their traditions, customs, and Native laws, and subscribe to the systems based on the Native ideals. The reality of Africa's population distribution strengthens this disposition.

Most Africans lived in rural communities and thus traditions, customs, and native laws, more than Western-style official government declarations, regulate the African lives. As an example, Thompson (1996) analyzes the impact of legal pluralism on due process and its application in Sierra Leone, which Thompson describes as "a former British territory struggling to adapt traditional African cultural values to the modernizing demands and pressure of Western values inherited from Britain and the other defunt colonialists in Africa. Thompson finds that criminal law and procedure in Sierra-Leone reflect their Native African and English law sources, even though in Sierra Leone

the substantive criminal law (allegedly, “general law”) substantially derives from the imposed English law. Thompson makes the following statement that is as important to Sierra Leone as it is to all African countries

Thus “regardless of the availability of statistics, it is fair to say that local courts dispose of a significant volume of *small* criminal cases involving customary law yearly throughout the country since the vast majority of Sierra Leoneans are rural people who regard themselves, and actually live their daily lives, as subjects of customary law. It may be argued, therefore, that it is a matter of legal priority to ensure that such a substantial proportion of the county’s population is given access to due process consistent with minimum international standards of fairness in the sphere of adjudication of criminal cases”. (Thompson, 1996)

Having noted that Thompson’s assertion applies to Sierra Leone as well as other African countries, it seems that Native, unofficial courts across Africa dispose of an extensive proportion of *big* as well as *small* criminal and civil cases that may or may not involve customary law. Regardless of the case-type, one of the primary consideration of a Native court instead of that of an official court. If disputants accept the jurisdiction of a Native court in a case, then that court may hear and satisfactorily determine the issue(s) involved whether the case is criminal or civil, small or big. Also, it seems reasonable to assert that the Native, unofficial courts across Africa dispose of more cases than their Western-style, official counterparts [see Okereafoezeke (2002) for the Igbo example].

In view of the evidence that the Native African systems of control are commonly used in African societies, it should be noted that the greatest obstacle to the advancement of the native systems and models of social control is the official governments' disregard for the Native systems in postcolonial African countries. The various postcolonial official governments routinely enact laws that subject the Native systems and models to their Western counterparts. Even where a government has not actively subjugated the Native systems to the western alternatives, it is likely to acquiesce to a colonially established system that invariably results in the continued subjection of the Native systems to the colonially imposed foreign system. In either situation, the relevant foreign system becomes or remains the standard by which relevant Native traditions, customs, and laws are measured to determine whether or not they should be applied. It is nonsensical for an African society to look to a European or American tradition, custom, or law to guide the African society in deciding whether to continue to apply or reject its long-practiced tradition, custom, or law. What is needed in Africa is official commitment to the Native systems of social control mechanism that matches the citizens' dedication.

There are thus relevant and important parts for Native African traditions, customs, laws, courts, and law enforcement structures in the overall strategies of social control of crime in contemporary Africa. This is so as it has been often the situation in postcolonial Africa, the Native systems are subjugated to the official, foreign-based systems. Regardless, instances abound across Africa of the immense roles and success of the Native Africa courts, for example, routinely manage criminal as well as civil cases, many of them involving very

serious issues. Arguably, more cases are managed in the Native African courts than in the foreign-based courts in the continent. By managing so many cases in the Native courts, the Native systems reduce substantially the volume of cases that would have been tried in the official courts.

Self-Assessment Exercise 3.3

Evaluate this statement “informal, traditional social control of crime as being managed by the Native authority help in reducing substantially the volume of cases that would have been tried in the official courts”.

3.4 International Recognition and Support To Traditional Justice In Peace building

There is undoubtedly greater interest in and recognition of traditional justice in the international peacebuilding community, at least at a rhetorical level. As the now seminal document in the field, the UN Secretary General's *Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* recommends, "due regard must be given to indigenous and informal traditions for administering justice or settling disputes, to help them to continue their often vital role and to do so in conformity with both international standards and local tradition. Where these are ignored or overridden, the result can be the exclusion of large sectors of society from accessible justice."

Moreover, the very definition of justice used in the Secretary Generals report gives place to traditional justice. The report defines justice as "an

ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Justice implies regard for the rights of the accused, for the interests of victims and for the well-being of society at large. It is a concept rooted in all national cultures and traditions and, while its administration usually implies formal judicial mechanisms, traditional dispute resolution mechanisms are equally relevant."

It is also worth pointing out that traditional justice has partial basis in international law, as articulated in Article 34 of the *United Nations Declaration on the Rights of Indigenous Peoples*: "Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards." It is important to note, however, that the term indigenous here is used as a reference to the original inhabitants of parts of the world before the onset of European colonization, and is thus different from "indigenous" as a synonym of "local" or "traditional."

"Legitimacy is a cornerstone of justice, and means and priorities must be locally defined. All these ideas are now generally accepted," but remain far from being always applied in practice. "Despite the prevalence of traditional and customary law, these systems have been almost completely neglected by the international development community, even at a time when justice sector reform has become a rapidly expanding area of assistance."

Self-Assessment Exercise 3.4

Considering the abundant postulations, would you subscribe to traditional means of social crime control? Enumerate your views.

3.5 Formal versus Informal Mechanisms, Re-defined

For purpose of clarification, both here and elsewhere, I have sometimes found the categorization of mechanism of traditional justice as "formal" or "informal" to be convenient tool. This taxonomy has the virtue of affording a quickly-accessible conception of the various kinds of mechanisms that are available to be used. Mechanisms are considered to be "formal" by virtue of their connection to the governing body (or an international body) and because of the codified practices that assure both procedural fairness and standards of accountability, based upon a collection of cultural norms. "Informal" mechanisms, by contrast, are required to meet none of these standards, and are not formally codified.

Societies around the world are by now familiar with "formal" mechanisms of justice. In the West, the trial is the most recognizable of these. Although mostly used to prosecute a citizen of a particular state at the national level within that state, permutations of this form have begun to arise. Among these are efforts by a national court in one to prosecute a citizen of another state for crimes committed elsewhere, such as in Belgium, where *genocidaries* from Rwanda have been successfully tried for war crimes and crimes against humanity

committed by foreigners outside its territory under Belgium's universal jurisdiction laws (sorry Day, 2005). Other efforts in this direction have the form of international tribunals, modeled in part after the post-war Nuremberg trial and Tokyo tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), and the recent initiation of the International Criminal Court (ICC)

At other times, states have opted to implement other mechanisms to affect this kind of social rebuilding. Broadly, these may take the form of official apologies or financial restitution. Again, states have implemented many variations of these two different methods of reparation. Beginning 26 May 1998, the Australian government annually holds National Sorry Day to "participate and be involved in activities to acknowledge the impact of the policies of forcible removal on Australia's indigenous populations." The restitutive example most often cited, and which is frequently touted as a success, is of the Canadians and Americans of Japanese decent who were interned during the Second World War In 1988, the American government gave those Japanese who had been interned USD $20,000 per survivor as a form of compensation under the Civil Liberties Act, while in the same year, the Canadian government awarded CAD $21,000 under the Japanese Canadian Redress Agreement.

Another of the formal mechanism that has been implemented in the modern era is the truth commission. The first-ever truth commission was convoked in Uganda in 1974, although the

first-ever truth commission to fulfill its mandate and complete its work was not begun until 1982 in Bolivia. Since that time, more than 20 truth commission have been appointed by national governments, among them highly successful commissions in Argentina, Chile and South Africa.

Informal mechanisms, however, are often much less familiar to those who live in the West. In many cases, these mechanisms follow "traditional" practices that were used to keep order within societies and to provide socialization into the accepted norms of the community. These are found in societies around the globe, and include a type of traditional psychological healing called *conselho*, practiced by the war-affected in Angola," (Carola, 2002). Holistic purification and cleansing rituals, attended by the family and broader community, are carried out in welcoming ex-combatant child soldiers back into the community in both Angola and Mozambique (Alcinda, 1997). In Western Kenya, traditional conflict resolution mechanisms are used by the Pokot, Turkana, Samburu and Marakwat tribes. And ceremonies to "cool the heart (s)" of child ex-combatants upon their return to their home communities in Sierra Leone are carried out by the broader community. (Rosalind, 2005).

Yet this distinction between "formal" and "informal" is problematic for a number of reasons. First, it is often the case that customary mechanisms are recognized and adopted by the state apparatus, thereby becoming "formalized". For example, Rwanda has chosen to utilize its tradition of *gacaca*,

a form of traditional dispute resolution mediated by chiefs and tribal elders, now re-vamped and codified into state law, to deal with those who perpetrated crimes of genocide. (Harrell, 2003).

Second, many customary mechanisms already operate at a level that is highly respected by the community in which they take place. In many parts of Uganda, such practices, in fact, have more *de facto* authority than comparative Western models. Particularly among the Sabiny and the Karamojong, this is the case. It was frequently reported to me that the councils of elders hold more sway within the community than do government-appointed law enforcement officers, and that such councils have the authority to override police sentences: "for example, a clan may come to the police to demand a prisoner's release because conditions in prison are too good. So they will go to the prison and pull him out. And the police don't dare say no because they will have to deal with 500 armed warriors" (Hayner, 1994).

Third, many of these mechanisms are utilized by different groups at different times. And so they do not remain static in their categorization as formal or informal. The truth commission provides an apt example. In South Africa, truth commissions have been both formal and informal. In 1992 and in 1993, two truth commissions were carried out during the era of *apartheid* by members of the African National Congress (ANC); by my own "formality criteria laid out above, these two truth commissions were "informal". Then, when the ANC came

to power in 1995, it convoked the much-publicized truth and Reconciliation Commission, a formal body.

Fourth, it is often the case that mechanisms that are considered "informal" at first glance may actually have codified procedures. Customary mechanisms are built on ceremonies and traditions that have evolved over time into precise instruments that are carried out in an almost "formulaic" manner at times, much as ceremonies of liturgy or eucharist are carried out within Christian religious observances. As such, these traditional mechanisms are strictly organized. This is truth among the majority of traditional ceremonies practices among the different ethnic groups within Uganda; among the Karimojong, for example, the *akiriket* meetings are very stratified, and "everyone knows his position and where to sit." Likewise, Acholi mechanisms are carried out in a clearly defined manner. The actual reconciliation ritual (for example) to redress the wrongs of a killing between clans is complex and sophisticated. The ritual involves many people and takes a full day. Before the actual ritual, however, many things must be arranged, discussed and decided upon. The ritual can be preceded by weeks, months or even years of careful negotiations. (Finnstrom, 2003).

The fifth problematic element of this distinction between formal and informal is that the lens that is often used to decide between formal and informal presents a kind of cultural bias. So-called international standards – as stated above, a collection of cultural norms from a select grouped of

nations – are being used as benchmarks. Indeed, the inverse might actually be ideal. That is, some of the questions arising from the on-going conflict in northern-Uganda and other transitional situations should inform current international law, rather than constantly having to fit.

Self-Assessment Exercise 3.5

Re-evaluate the relationship between formal and informal mechanisms of crime control.

4.0 Correlates of Formal and Informal Social/Crime Control.

There are two major ways for a society to control its members, formal and informal. A major goal of both forms of control is to curb criminal behaviour. Formal criminal justice control uses the law and official government agencies (e.g., police, courts, and corrections) to ensure compliance. Informal criminal justice control uses morals and social institutions (e.g., family, peers, and neigbours). China has a long history of using informal criminal justice controls.

Nevertheless, there has been a movement during the past several decades towards use of formal criminal justice controls. This study examined the level of agreements with both forms of control and the correlates of each form using a survey of Chinese college students. Findings from multivariate analysis indicated that those who held a Confucian belief in

law and punishment, those who have a higher distrust of strangers, and those who grew up in rural areas were more majoring in the area of law and male respondents were more supportive of formal control.

Related Literature

The research is informed by previous studies that have examined the justice systems of some former British colonies in Africa, namely: Zambia; Ghana; Malawi and Zambia; Lagos, Nigeria; Kano, Nigeria; Sierra Leone. The findings from these studies demonstrate the pervasive nature of the contradictions, disagreements, and conflicts between the native African societies and justice systems, and the imposed English system brought about by colonialism. In watch situation, a mixed or plural justice is found. In most cases, the native judicial bodies are subject to the English-style courts. Whatever the arrangement, each study shows that there is a dual or multi justice system available to the native African population. Often, this leads to confusion as a result of uncertainty about the guiding rules of conduct. However, the situation confuses the native because their native modes of conduct, which they have accepted, differ from those imposed by official laws.

The Repugnancy Test

The *repugnancy test* is the official government's legal requirement that a customary law or tradition, to be enforced,

must be neither repugnant to natural justice, equity, and good conscience, nor contrary to any written (official) law. The colonial *proclamation* No. *6 of 1900*, which the British enacted to consolidate their rule over Nigeria, remains a part of the Nigeria justice systems. Today, all state *Customary Courts Law* empowers a Customary Court to apply native laws and customs except where a native law or custom violates the repugnancy test.

A set of laws is an embodiment of people's history, experiences, and aspirations. Their history and experiences are couched as the people's customs and traditions. Changes to those customs and traditions represent the people's aspirations. Such changes should occur only as and when the people laws should emanate from a broad spectrum of the people, rather than from a few. This is the distinction between "customary law" imposed from the top and that developed from popular practices. Laws that are imposed by a few cannot become an acceptable means of social control; a *priori* where the imposition is by a foreign power, such as imperialist Britain did in Nigeria. The origin, history, contemporary circumstances and application of the repugnancy test official justice policy in Nigeria show that the policy, formulated and promulgated by the British colonialists for Nigerians, is an obstacle to the growth of Nigeria's native justice systems. Measuring the quality of a native law or custom on the basis of foreign or alien consideration such as those brought about by British colonial laws or even local official laws made since

Nigeria's independence does not augur well for the growth of the native justice systems.

How to redress the Anomalous Repugnancy Test

One, the data shows that the official courts generally rely on the English-style laws even though there are Igbo native laws, customs, and traditions that could be applied to the cases before the official courts. Thus, judicial officers of the official case management avenue among the Igbos (Customary Court, Magistrate Court, High Court, Court of Appeal, and Supreme Court) should accord more recognition and deference to the Igbo natïve laws, customs, and traditions. This means that, wherever appropriate, the unofficial court personnel especially should apply the germane Igbo tradition, custom, or native law. The official court personnel especially should do away with the present deference to the English-style laws, which deference occurs at the expense of the Igbo native laws, customs, and traditions.

Two, there is no streamlined arrangement for revising the Igbo customary laws and traditions. Even where such revision occurs, it is isolated from the rest of the world because it is not publicized for the general public's benefit. Therefore, in recognition of the dynamic nature of the Igbo society, Igbo customary laws and traditions that have become inconsistent with the contemporary Igbo ways of life should be revised to make the laws and traditions consistent with the changes in the society. Some of the pre-colonial Igbo native laws and

customs nay no longer be authentic, the reasons for their being no longer existing. The relevant communities should have the first opportunity and responsibility to revised such laws and traditions since the community members' behaviors are being regulated. Nigeria's official courts should not be too eager to discard a custom or tradition without proper evaluation.

Three, the continued application of the repugnancy test along the lines designed by the British imperialists is unacceptable. The sustained subjection of the native laws, customs, and tradition to the official, English-style laws results in inconsistency between the generally accepted rules of conduct in a community and the officially imposed imposed government laws. Thus, the relevant official governments should repeal the repugnancy test statutes throughout Nigeria. More than the present form of the repugnancy test, a policy that allows the members of each community the first option of determining their native laws and customs would be preferred, even if the official governments would step in where for instance there is a violation of an individual's human right. The present repugnancy test policy has no place in an independent Nigeria, even if Nigerians now make the official laws to which the native laws and customs are subjected. The point remains that state and federal officials – who are far removed from the locals – make the official laws, and so these laws are rarely consistent with the local beliefs and identify.

Conclusion

A change of the repugnancy test justice policy would amplify the necessity to avoid official imposition of "customary law" from the top. For Instance, the customs, traditions, and laws of each community would be allowed to develop from popular practices within the population. The Igbos, like non-Igbo Nigeria communities, faces the ambiguity of operating traditional laws under the control of statutory laws "Repeal of the illogical repugnancy test would set the stage for needed changes to justice systems in Nigeria.

Self-Assessment Exercise 4.0

Justify the literature review, the clamour for traditional means of crime control along with formal means.

5.0 Summary And Conclusion

This Unit contends, with justification, that the Traditional, Informal thoughts on control, justice, and law are superior to their Western counterparts. Thus, for the purposes of social, political, cultural, religious, and other forms of *control, justice, and law* in an African society, the Native African ideas and models are superior to their Western and other non-Native counterparts. The Native African ideas and models should therefore be preferred, strengthened, advanced, and promoted for many reasons. The following six key reasons justify this contention.

One, the Traditional, Informal African ideas and models of control, justice, and law are predicated upon, and strongly supported by, the histories, experiences, practices, beliefs, and expectations of the African societies the members of which are subject to the control, justice, and law principles. Two, the foreign meansof control, justice and law in Africa were imposed on Africans with little, if any,, consultation with the citizens whose lives were - and continue to be – regulated by the foreign models. Thus, Africans did not consent to the adoption of the foreign, Western systems for the African societies. Three, the Native African systems of control, justice, and law are efficient and effective in African societies and communities, even in the postcolonial State. These Native systems continue to be widely used by Africans, even if the various official governments unjustifiably and illogically promote the colonially imposed, foreign systems. Four, despite their pretences to the contrary, Western colonial regimes and their agents were in Africa to serve the narrow, selfish desires of the West, and they have brutally and ruthlessly served those wishes at Africa's continued expense. Thus, when the British Lord Fredrick Lugard states in a December 1916 "Quote of the Week" that, "I have spent the best part of my life in Africa, my aim has been the betterment of the Natives for whom I have been ready to give my life", he is being dishonest and disrespectful to the intelligence of Africans by expecting them to accept a narcissistic colonial effort to tame them. After all, Africa was, and remains, replete with evidences of the British and other Western conquests and expansionism

effected through stealing and destruction of African lives and properties. Five, the imposed foreign systems differ fundamentally from the Native African justice that emphasizes *righting wrongs as circumstances necessitate* over a specific formal structure (Nzimiri, 1972). Six, the Western systems of control, justice and law are limited in scope, in the sense that they (particularly, the English system) do not anticipate or manage all the species of issues, that the Native African systems anticipate and manage (Okereafoezeke, 1996;2002). The Native African systems foresee the need to nip an issue (even if it appears to be minor) in the bud to avoid its growing into a major issue that could destabilize interpersonal and inter-group relationships and, perhaps, a whole society. Therefore, the systems are better equipped (than their Western counterparts) to serve the African societies. In the face of the general inadequacy of the Western systems of control, justice, and law for the African societies, there remains an undeniable need to fundamentally alter the Western systems that apply to the African societies. Such alteration should refocus on the applicable Native and Native-based systems and strategies of control, justice, and law to shore up private and public security, law enforcement, adjudication, and reforms of persons deemed to have contravened society's laws and other regulations. Before Africa's contact with Westerners, Native African traditions, customs, and laws were the foundations of control, justice, and law in African societies. With necessary changes to reflect the dynamics of society, the Native African ideals can still guarantee efficient and effective control, justice,

and law in modern African societies. But first, individuals and groups, particularly those in authority positions in each African society, have to be willing to make the necessary changes.

Individuals and groups in official (governmental) and unofficial (non-governmental) positions in postcolonial African States can be influential in any effort to refocus or reconstruct control, justice, and law mechanisms in modern African societies. However, in view of the fact that the State controls most of the wealth and enforcement powers in each African State, the State and its officials are indispensable in any effort to reenergize and grow the Native systems. Also, it is clear that the colonists used political and legal fiat to accomplish their desired subjugation of the Native African systems to various Western systems. For instance, the British colonists enacted the *proclamation No. 6 of 1900* to consolidate their rule over Nigeria. In various forms, this colonial legislation remains a part of control, justice and law in post-British Nigeria. Today, all states in Nigeria continue to have equivalent provisions as parts of their laws)Okereafoezeke, 2000; 2002).

It comes to this question: Do postcolonial African societies have the quality leadership with the necessary political will to make the change needed to bring about the desired reversal that would grant the Native African systems the primacy of place in African affairs? Most unfortunately, for the overwhelming majority of the African societies, the answer so far, appears to be in the negative. Political will involving well-

informed and active citizens and political leaders is necessary to change colonial models or rules of control, justice and law that the *proclamation No. 6 of 1900* exemplified. A well-informed, honest, and patriotic political leadership would make necessary policies and programs to unshackle the postcolonial African society from the hegemonies of the Western imperialism in Africa. Such policies and programs would include those that would repeal such obnoxious laws and their replacements with laws and other policies and programs that promote and strengthen the Native systems for control, justice, and law. If the leaders continue to ignore this important duty, conditions to anomie may overtake the postcolonial African countries to the point that the citizens may adopt a self-help attitude and take the laws into their own hands. In the meantime, African leaders need constantly to be reminded that they have failed woefully on this issue of repositioning the postcolonial African State to properly utilize its indigenous control, justice, and law resources to advance society. These leaders have to desist from leading Africa on the copious control, justice, and law paths that duplicate the foreign, western experiences and aspirations, but which have little semblance to Native African ideals and expectations.

6.0 Tutor-Marked Assignments

(i) Considering the submission of this unit, how would you rate the traditional, informal mechanisms of crime control?

(ii) Itemize the six points as identified and stated in this unit to justify the need to strengthen Traditional, informal mechanisms of crime control as against the Western, formal approach.

(iii) Critically analyze formal and informal mechanisms of crime control.

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MODULE 3

INTRODUCTION

Unit 3 Traditional and informal mechanisms of crime control: interfacing Indigenous and English Policing (control) in Nigeria.

Contents

1.0 INTRODUCTION

Contextually, this unit roled out a lot of intrinsic experience of traditional crime mechanism control in Nigeria in particular. Among these, are factors enabling Indigenous social control in a modern African State, the kind of relationship that existed between Indigenous and Foreign Law Enforcement in postcolonial era, the modalities employed for as regard security maintenance, Crime Prevention and general law enforcement in postcolonial Africa, patterns of indigenous security maintenance, crime prevention and other law enforcement.

Conclusively, an overview was drawn regarding effective policing of a postcolony.

2.0 OBJECTIVES

It is conceived that by the end of this Unit, you should be able to

- Have a practical knowledge and understanding of how effective and at the same time how porous traditional mechanism could be if unchecked.

- Understand and appreciate various forms of security maintenance, crime prevention obtainable in post colonial Africa.
- Appreciate kinds of Indigenous security maintenance, crime prevention and other mechanism of law enforcement.
- Lastly and not the least, be able to filter and consequently understand what seemingly look confusing, the average Nigerian socializing cultural expectations and standards of behaviour deeply rooted within standard English-styles rules and regulation that diverge from the previously learned indigenous norms.

3.1 Traditional and Informal mechanisms of crime control:

Social control in post colonial Nigeria, and most of Africa, is largely divisible into indigenous and foreign types. In the Nigeria example, the indigenous variety is rooted in various Nigerian traditions, customs, and native laws, while the foreign type is English in origin and bears the hallmarks of European culture. It is true that over the years the English social control system in Nigeria has taken on some local Nigerian coloration. Nonetheless. In the present Nigerian setup, the foreign system is called upon to anticipate and regulate lives that ate mainly alien to the system. The lifestyle of a Nigerian or other Africans seems fundamentally different from that of an English or other European. For this reason,

the English social control system in Nigeria may be unsuitable to effectively regulate relationship in Nigeria.

The observation that the English-based law enforcement system may not sufficiently guarantee a stable postcolonial Nigeria appears to contradict the country's "modern" status. To many Nigerians and Africans, a postcolonial, modern nation should earnestly pursue social control consistently with the systems and techniques bequeathed to it by its ex-colonizer. Consistently with this mindset, Nigeria's modern social control has to fundamentally agree with the colonial era British system in Nigeria or its postcolonial version. In any case, this way of thinking argues further, social control in postcolonial Nigeria ought to be mostly, if not entirely, consistent with the imported British type. This is a rather curious and unfortunate line of reasoning. There is nothing universal about a European social control system. The English system, as an example, developed from the traditions, customs, and native practices (tribal laws) of England. Thus, the English system is perhaps best suited to regulate relationships among the English, not among Nigerians, all its ethnic nations inclusive. The prevailing postcolonial setup establishes a dual system (foreign and indigenous). However, most African States, including Nigeria, invest a great deal of resources in promoting foreign social control systems over the indigenous systems. But, since the foreign systems reflect foreign (usually European) norms rather than African norms, the average African suffers from a confused (norm less)

condition in which the official governing rules of conduct differ from, and do not reflect, the indigenous practices. Such is the case in Nigeria (Okafo, 2005)

Despite the African elites' and official governments' tendencies to advocate and promote European social control systems over their indigenous African counterparts, the African systems persists. In the Nigerian example, several factors account for this.

Self-Assessment Exercise 3.1

Do a brief comparison between indigenous and English Policing, citing Nigeria as a case study.

3.2 Indigenous Social Control in Modern African State

The prevalence and, many would argue, efficacy of indigenous social control in postcolonial African States is well established (see as examples: Nzimiro, 1972; Okereafoezeke, 2002; Elechi, 2006). With the Nigerian State example, this unit identifies and briefly examines the reasons grounding indigenous social control. Okafo (2005) referring to the August 2004 Okija incident (in which the Nigeria Police Force recovered dozens of human skulls and decaying bodies at the site of Ogwugwu

isiula, Okija, a traditional Igbo Shrine in Okija town) as an example of traditional social control gone bad, asks:

> *"Why do the Okija's … exist and flourish among us?" The fact that Nigeria's official Criminal Code criminalizes the type of traditional crime management that apparently occurred in the August 2004 Okija incident makes this question particularly relevant. The Code defines this form of native-based crime management as a "trial by ordeal" punishable under section 207-213. in view of this strong, negative official attitude toward this traditional process, those Nigerians that persist in managing their civl and criminal cases through the deities must be doing so for compelling reasons.*

Okafo (2005) goes on to identify several explanations for the continues existence and critical role of the okija's and other indigenous agencies of law and order in Nigeria (see also Olereafoezeke, 2006).

The following are five explanations (Okafo, 2005) Okereafoezeke, 2006). One, (Perceived) ineffectiveness and Inefficiency of English Law and Justice: In the face of rising crimes, particularly violent personal and property crimes, many, perhaps most, Nigerians view the English system of law and justice in Nigeria as ineffective and inefficient for social control in the country. Two, Alienation From the British-Imposed, English System: The imposed English-based common law system of social control in Nigeria lacks the foundation that it enjoys in its native England. The common law in Nigeria is bereft of the cultural foundation it enjoys in

England. Three, pride in culture: The continuation and expansion of Nigeria's indigenous social control systems partly derives from many Nigerians' natural human impulse to resist British "substitutive interaction" (Okereafoezeke, 2002, pp.18-20) policies toward Nigeria's indigenous systems and practices with their British versions. Four, Mounting Evidence Against a "Developing, Modern Nigeria". In virtually every respect, the institutions and infrastructure of the Nigeria State (electricity, roads, medical care, educational institutions, elections organization and supervision, etc.) have degraded substantially. Today, these institutions and infrastructure are, in most cases, far worse than they were under imperial British rule, mainly because of entrenched official corruption. The 2007 Nigerian "elections" evince the immense of official corruption in the country. In the "elections", the President Olusegun Obasanja-led PDP political party (which by its actions and words is really a subversive criminal gang), like a slave master, visited widespread corruption, violence, theft, and intimidation on the citizens and allocated votes and victories to PDP candidates without regard to the voters. Witnessing the images of the failures of the Nigeria Stare, the citizens understandably focus on their ethnic nations and indigenous systems to regulate relationships. Five, Desire for Quick, Inexpensive Justice: Justice in Nigeria's English-based official system is too expensive, time consuming, and insensitive to the Indigenous Nigeria culture. The country's indigenous social control mechanisms, on the other hand,

appear to satisfy Nigerians' yearning for quicker, less expensive, and culturally relevant justice and social order.

The five explanations offered in Okafo (2005) for the continued and growing uses of indigenous social control in modern Nigeria support the view that the tradition will not die anytime soon. There are compelling religious, cultural, philosophical, ethnic, and material reasons, as well as reasons of official government ineffectiveness, inefficiency, citizens' pride, belief, fear, apathy, and limited resources for Nigerians to use their indigenous social controls, rather than the English-based systems. The practice will likely continue and probably expand as more people lose faith in the English-based system. As in other African countries, as long as the foregoing reasons persist in Nigeria, indigenous systems and practices of order maintenance and other social control will remain strong even in a "modern" Nigeria.

With particular focus on law enforcement and based on the Nigeria example, the following sections of this unit examine the role of indigenous systems in policing and order maintenance as well as the nature of the relationship between the indigenous systems and the official, European-based enforcement systems.

Self-Assessment Exercise 3.2

What are the factors that could enable indigenous social control mechanism survive in a modern African State

3.3 Indigenous and Foreign Law Enforcement in postcolonial Africa

Just as in other aspects of social control, justice, and law n indigenous Africa, there is strong evidence that the traditional mechanisms for security maintenance, crime prevention, and general law enforcement remain strikingly relevant in modern Africa. In pre-colonial Africa, the details of the mechanisms varied from one community to another. Nevertheless, the general theme was the furtherance of control, justice, and law in the African societies by using the applicable indigenous strategies and techniques. The indigenous strategies of control, justice, and law in each pre-colonial Africa society had grown out of the society's traditions, customs, and native laws. Some aspects of social control in contemporary Africa are similar to the pre-colonial practices.

In traditional Africa, security maintenance, crime prevention, and general law enforcement are based on each society's historical circumstances and desires. Thus, most members of each society willfully partake in programs and activities to prevent and control crimes and deviances. Community members, individually and collectively, play roles in each society's law enforcement efforts. Community members generally accept the group's methods and procedure for security maintenance, crime prevention, and general law enforcement. One of the main reasons for the wide acceptance

and celebration of the indigenous methods and procedures is that the citizens tend to know their society's control, justice and law personnel well. The citizens have a reasonable knowledge of each office holder's morals, values, and ethics. Since the citizens of an indigenous society have direct and indirect influences on their control, justice and law personnel, persons whose morals, values, and/or ethics are at variance with the general societal standards are unlikely to occupy or remain in their assigned positions.

The security maintenance, crime prevention, and general law enforcement duties in a traditional African community devolve on various community institutions, groups, and members. The obligations fall on such community structural levels of government as the Family, the Extended Family, the village, the village Group, the Town, and the Community of Towns based on well understood geographical and subject matter jurisdictional considerations. 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 Grades. For instance, a Young Men's Age Grade among the Igbos of Nigeria may be charged with the responsibility of security of security maintenance and general law enforcement. Community members may mandate and expect the Young Men's Age Grade to use commonly sanctioned vigilantism to prevent

crimes by identifying, apprehending, and processing persons suspected of committing crime. The Age Grade's other responsibilities may include enforcement of judicial decisions, such as by means of oriri iwu (retrieving Judgment fine) or *igba ekpe* (publicly shaming and humiliating a criminal) (Okereafoezeke, 1996; 2002). Also as in the pre-colonial era, the *mmanwu* (masquerade) in postcolonial Igbo has, among other things, the task of law and order maintenance in some cases:

You also have the masquerade cult *mmanwu* as a [traditional] government functionary. Many of the function of these masquerade is to effect obedience to the sanctions of the town on a culprit. These masquerades could invade a culprit's home, and seize all his belongings until the owner paid the stipulated fine for his crime, and again reclaimed his property by a further fine. This police action of the masquerades is generally referred to as *iri iwu*. Some masquerades, the clever one of the young boys, called *iga*, also kept surveillance over the village streams during the dry season, to see that water wasn't misused (oral historical account by a witness, Noo Udala, aged 102 years, native of Umuaga, Agbaja, igbo, quoted in Isichei, 1978, 74).

Self-Assessment Exercise 3.3

Itemize kinds of relationship that existed between Indigenous and foreign law enforcement procedures.

3.4 Security maintenance, crime prevention, and general law enforcement in postcolonial Africa

This involve contests and struggles between indigenous and foreign (colonially imposed European) ideals (Okereafoezeke, 202; 2006). The official governments of modern African countries have either adopted the colonially imposed European models or created such foreign ideals in the respective postcolonial countries. Whatever its form, the prevailing situation gives rise to many systematic conflicts between indigenous and foreign models of social control, justice, and law in Africa. For instance, the Nigeria Police Force (NPF), which the British colonialists patterned for Nigerian foundation and is structurally and procedurally a sranger to Nigerians. Regardless, successive Nigerian governments since the country's independence have favored the imposed foreign model over the indigenous law enforcement systems. Thus, in Nigeria – as in most other contemporary African States – the NPF has officially assumed the security maintenance, crime prevention, and general law enforcement functions that the indigenous security systems performed in the pre-colonial era. As a result of African governments' official emphasis on the foreign models, these governments use a lot of human and material resources pursuing and applying to African conditions strategies that are designed for other (usually, European and American) conditions, mostly without making honest efforts to respond to

the African circumstances that differ substantially from those of the west (see Onyechi, 1975).

For several reasons, the security maintenance, crime prevention, and general law enforcement systems in postcolonial Africa, exemplified here by the Nigeria Police Force (NPF), are incapable of satisfying the security and law enforcement needs of the citizens. The present official NPF can be traced directly to the colonial era British West African Frontier Force (BWAFF), which the British created for their colonized populations in West Africa. Therefore, it is not surprising that both the BWAFF and the NPF follow largely the same structure, philosophy, and model as the British idea of public security and policing. As a result, the NPF can be identified as little more than a throw back to the period of Nigerians' subjugation to colonial Britain. The NPF is largely foreign to Nigeria's indigenous law enforcement systems and practices. Its foreign structure and largely unquestionable powers over the citizens, among other factors, demonstrate the NPF's inconsistency with Nigerians' traditional models and form of law enforcement and social control.

Several other factors compound the divide between Africa's official security and law enforcement systems, on the one hand, and the indigenous systems, on the other hand. These factors include unjustified official unitary policing, official

police corruption, and insufficient number of official police officers and personnel. Corruption in African police organizations appears to be widespread. Apart from incidents of the police demanding and receiving bribes or "settlement" from sometimes equally corrupt citizens, many police officers plan and commit serious crimes, such as robbery and murder, against the citizens that the police are supposed to protect Police officers alone may commit the crimes or the officers may commit the crimes in conspiracy with civilian criminals. A Nigerian case in which three policemen are tried and sentenced to death for the murders of defenseless traders is illustrative. The policemen, while on official duty, burned the commuting traders alive in the victims' motor vehicle and stole over one million Naira belonging to the victims. The victim were traveling to a wholesale market to purchase goods for resale (see "Three policemen to die for setting traders ablaze", in *The Guardian,* April 3, 2001)

A case such as that of the three murderous police officers contributes a lot to the citizens' lack of trust in the official police. Hammer (1993) reports that in one case in Kenya a woman is robbed of jewelry worth fifty thousand dollars. She reports the crime at the local police station. To her consternation, she recognizes that the police officer recording her report is wearing one of her stolen diamond rings! Can a crime victim in such a situation have faith in the police? In the Nigerian example, the negative images of the country's official police lead directly to the intended or unintended exclusion of

decent citizens from official policing. And so less honest and less effective people generally staff Nigeria's official law enforcement system. I suspect that this is similar to the situation in many other African countries. The fact that many of these official police organizations employ far less than the number of officers and personnel needed to adequately police their countries worsens the situation.

Also of critical importance is the fact that most of the official governments in Africa run their police organizations as unitary agencies often to be manipulated to serve the shortsighted interests of the prevailing regime, rather than as broad-based democratic institutions to be used to maintain public security, prevent crime, and generally enforce laws for the greater public good. While professing constitutional federalism, many African governments, such as Nigeria's, insist on rigidly unified official police. Such an organization, no matter how large, answers to one person. As in the colonial era, the unitary model makes it easier for the rulers to dominate and control their population.

If any objective Nigeria had any illusion about the quality of law enforcement by the NPF, that illusion should have disappeared after the so-called 2007 Election in the country. In the April 14 and 21, 2007 election exercise, Nigerian president, Olusegun Obasanjo, leader of the ruling political party and two other primary actors of the elections, professor Maurice Iwu, who headed the Independent National Electoral Commission (INEC), and Sunday Ehindero, the Inspector

General of the Nigerian Police Force (NPF), together manipulated the outcomes of the general elections in Nigeria. Local (Nigerian) and international elections observes have expressed shock and unanimous condemnation of the exercise, President Obasanjo had described the coming elections as "a do or die affair" for him and his party. A couple of days after his comment, the media pressed him for clarification of his earlier statement. He barefacedly repeated his assertions without apologies. True to his political beliefs, the president lived up to his prophecy of "winning" the elections for the majority of his selected candidates at all costs.

The NPF and INEC's roles in actualizing the Obasanjo script are shameful and damning. The NPF helped the PDP thugs to steal ballot boxes and papers to be thumb-printed for the preferred PDP candidates. Where the thumb printing could not be completed quickly, INEC wrote fictitious election results declaring PDP candidates as the winners, regardless of the votes. The extent of the official corruption among the PDP, INEC and the NPF was so brazen that the INEC felt comfortable in declaring the PDP governorship candidate in Anambra State, Emmanuel Andrew Uba, as the winner, twice. The first time, the number of votes allocated to him was so high that the alleged votes exceeded the number of registered voters in the state; so that even if there had been 100% voting by the registered voters in the state (an impossibility) the allocated cotes would have been higher. INEC Chairman

Maurice Iwu and his hatchet men, realizing their stupidity in not being able to count and total figures, revised and figures to suit the PDP. Even in the circumstances of the official corruption called Nigeria, the impunity of the NPF, PDP, and INEC actions in the 2007 Elections is beyond the place. In particular, the IGP Sunday Ehindero's NPF's willingness to myopically and slavishly serve the narrow, criminal Obasanjo monstrous shadow and his vehicle (PDP) is stunning.

Self- Assessment Exercise 3.4

Write a brief overview regarding kinds of security maintenance, crime prevention obtainable in postcolonial Africa with empirical examples.

4.0 Patterns of Indigenous Security Maintenance, Crime Prevention, and Other Law Enforcement

The following hypothesis guides the discussion in this section "An unsatisfactory system of official security maintenance, crime prevention, and law enforcement in a modern African community will lead to an increase in demand of alternative (unofficial, sometimes extra-legal) security and law enforcement systems and organizations aimed at addressing the citizens' desire for secure and ordered lives." Instances of African countries in which the citizens generally yearn for

alternatives to the official security and law enforcement systems abound. But suffice it to cite Cameroon, Kenya, Nigeria, and South Africa as some of the countries that are popularly regarded as having ineffective official police forces and other official crime prevention structures. See Okereafoezeke (1996; 2002, 2003, 2006) for Nigeria examples. Some other examples are discussed below. Considering the utility of the indigenous systems in the prevailing circumstances, there is an incontrovertible need in many African countries for each official State Government to recognize and promote the relevant indigenous systems of security maintenance, crime prevention, and general law enforcement.

Instances of unofficial, indigenous security and law enforcement systems and organizations abound in Africa. It seems that the generally held view that the official, Western-style systems and organizations are incapable of providing needed security and law enforcement has strengthened the indigenous systems. The other related reason for the re-emergence of the unofficial security and law enforcement organizations is that most citizens regard the official organizations as imposed, irrelevant, and different in forms and procedures from the citizens' traditional outlooks, convictions, practices, and beliefs. In Nigeria, for example, there are the more prominent Bakasi Boys of the Igbo, the *Hisha* of the Hausa/Fulani, and the *Odu'a People Congress (OPC)* of the Yoruba, among many other indigenous law

enforcement and social control organizations. The Hisha, an Islam-based law enforcement organization, is officially charged (by each of the relevant state governments in Nigeria) with the responsibility of enforcing the state's *shari'a* system. Note that until about the middle of year 2000, the Hisha had no official legal backing in Nigeria. In fact the form of the *shari'a* that the *Hisha* is now asked in many northern Nigerian states to enforce came into being in 2000/2001. The *Bakasi Boys* and the OPC are not as religious-based as the *Hisha*. Nonetheless, the Bakasi Boys and the OPC often use indigenous African religious beliefs and practices to insure the supernatural power with which organizations operate.

In the southeastern state 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* move from one community to another fishing out suspected criminals (mainly perennial thieves, armed robbers, and murderers), arresting, and quickly judging and punishing he 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 are able to accurately identify a criminal even among a large group of people, thus avoiding misidentification or punishment of an innocent person.

The *Bakasi Boys*, the *Hisha*, and the *OPC* illustrate the largely, coordinated, and well-organized indigenous organizations for security, crime prevention, and law enforcement in African societies. As indicated, these organization, which were initially conceived as purely *unofficial, indigenous groups* for law enforcement, have since 1999 assumed positions as official, indigenous-based (*or in the case of the Hisha, religious-based) groups*. Their new positions stem from the fact that the various official governments have, by official laws, formally recognized the different organizations, even though the organization continue to operate based largely on indigenous ideals of social control, justice, and law. However, President Obasanjo's government strongly opposes the adoption of the *Bakasi Boys* and other indigenous law enforcement groups by various state governments in the country. The government has gone so far to use the official NPF to intimidate, stifle, and break up the *Bakasi Boys.*

Apart from the large, coordinated, and well-organized indigenous organizations found in many African countries, there are numerous other groups, such as neighborhood watch organizations or vigilante groups, found in most African communities. Again, these groups result from the ineffectiveness and efficiency of the official law enforcement organizations.

In Nigeria, for example, the watch organizations or vigilant groups exist to help guarantee security, law, order, and stability to the citizen of each community. Generally, the groups are more active in the night than during the day. Usually, able-bodied young men of each community, supported financially and materially by the other community members, are charged with the task of securing the community and enforcing the law, often with the aids of small weapons, such as machetes, bows and arrows, spears, and some guns. The watchers often seek to limit access to parts of the community by erecting temporary, movable obstacles on the roads that would slow vehicular and human traffic. Whatever their limitations, the neighborhood watch groups (vigilant groups) are deliberate, coordinated efforts at control, justice, and law, even if these groups operate outside the official laws. Moreover, it seems that most citizens are satisfied with the groups' activities.

Other, less organized local attempts at social control, justice, and law enforcement are plainly based on *mob action*. These are neither deliberate not coordinated. Thus, they are typically *ad hoc* and often thoughtless. The persons who seek to enforce the law by this method may take some rash action before thinking through the issues involved. Example, if a person (innocent or guilty) is alleged at a public place in Nigeria. Such as an open marketplace, to have stolen another's property, a mob may immediately take brutal action against the accused person, which action may result in death. It may later become

apparent that the accused person was, in fact, innocent. By then, it would be too late for the accused. In addition to the obvious undesirability of this result, there are other legitimate concerns regarding indigenous (unofficial) law enforcement.

While recognizing that traditional policing, vigilantism, and mob action may be necessary and beneficial responses to official law enforcement failures, the potential for abuses of traditional policing, vigilantism, and mob action should be highlighted. One of the key features of indigenous law enforcement is its wide acceptance by the citizens. Members of a society to which traditional policing, etc. apply generally accept and participate in their indigenous system. In short, the community members own the indigenous system. Being part owners of the system, it is very unlikely that any significant part of the population will be excluded from the system or its mode of operation. Generally, decisions are made and enforced with members' knowledge and consent. However, as in every human system, there is a danger of abuse of a traditional law enforcement system. This is so particularly where the indigenous (unofficial) and the State (official) policing systems, rather than complement each other positively, collude to abuse the citizens. Anyanwu (2007) reports an example of this.

According to Anyanwu (2007), in a late night and early morning of early February 2007 gun – and machete-brandishing men of a local vigilante group terrorized the inhabitants of Okpoko community in Ogbaru Local

Government Area of Anambra State, Nigeria. Community members interviewed for the report informed the reporter that the problem began when a group of people organized themselves, with the assistance of the official Nigeria Police Force (NPF) in the area, and imposed the group as a vigilante force. The group imposed levies of 3,000 Naira each on the locals and forced them to pay against their will. Apparently, the levies were intended for funding the vigilante group to secure the community, except that, as the report shows, most community members opposed the arrangement. The vigilante group ignored the wishes of the community members as well as an official court judgment allegedly against the group. In fact, the vigilante group increased the levy amount and, with the active connivance of the official NPF, used every (illegal) force at their disposal to force compliance. The spokeman of the community members who went to the Anambra State capital, Awka, and reported the matter to Governor Peter Obi, expressed the community's experiences and pleas to the governor, as follows:

> We have an ugly situation, people forced themselves on us as our vigilance group, while the majority of Okpoko said 'no.' They started extorting money from us and killing us in order to enforce the payment. They started brutalizing people, macheting us, gunning us down and even the people they shot were taken in a bus to the Government House and the governor saw them. We want the group to be dissolved, we don't want them. We've even gone to court and court even ordered them to stop, still upon the injunction they continued,

> now the court gave judgment, they continued. The High Court in Onitsha had in its judgment on the matter ruled: "It is never the part of the functions of police to enforce contract, collect rates debts including levied imposed by individuals or group of individuals".

Responding to the complaints, Governor obi assured the delegation that the Anambra State Government would immediately look into the issue and hold the suspects accountable. I speculate that the Okpoko community members rejected the vigilante group in Anyanwu (2007) for reasons other than a general community rejection of all forms of vigilantism. More likely, the community rejected *this* vigilante group for reasons such as honesty or character of its leaders/members or for the group's deviant/illegal activities. However, it bears repeating that the errant vigilante group is able to defy the community members and continue with its illegal and unpopular activities because the official NPF supports the group.

In view of the NPF support for, and collusion with, the errant vigilante group and the governor's assurance (Anyanwu, 2007), what realistically can the governor do? The governor of each of Nigeria's thirty-six states is often referred to as the "chief law enforcement officer" of the state. But a governor is helpless regarding official police control and actions. The governor does not control the police and the police can, and do, ignore the governor's expressed wishes to secure his/her state. As long as the police comply with the Nigerian president's and Inspector General of police (IGP)'s orders and

wishes, the police can carry on as they wish. This is so particularly where the governor and the president are political enemies. There are numerous examples in the Olusegun Obasanjo presidency (1999-2007) where Obasanjo, directly by action or indirectly by inaction, has used the NPF as an instrument of oppression and opposition to governors perceived as enemies of the president, which in well developed constitutional demoncracies, such as the United States, will constitute an executive abuse of power. Such was the case in July 2003 when Ralph Ige, Assistant Inspector-General of the NPF in charge of Anambra Chris Ngige of the state. The police, without legal authority to do so, informed Ngige that he was no longer the governor of the state. For hours, the police detained and prevented him from performing his duties. The police and their civilian co-conspirators purported to swear into office the deputy governor as governor of Anambra. There is no doubt that the police action was a *coup d'Etat*, being a forceful, unconstitutional take-over of government. However, Ige, the other participating police personnel, and their civilian collaborators got away with their crimes because president Obasanjo approved of their actions: years after their illegal actions, the criminal suspects have not been charged with any cime. Thus is the overwhelming power of the president over the governor of a Nigerian State.

However, traditional policing and mob action efforts at security and law enforcement in postcolonial African societies illustrated the ineffectiveness and inefficiency of the official

security and law enforcement apparatues. The unofficial, indigenous alternative systems and models of control, justice, law, security, and enforcement are established and maintained principally because the citizens of the communities where the models operate recognize and accept them as preferred alternatives to the official, Western-based models. 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. What is missing is the official State adoption of, and support for, the ongoing unofficial efforts to indigenize law enforcement and social control in postcolonial African societies.

Self-Assessment Exercise 4.0

Cite patterns of indigenous security maintenance and justify your views empirically.

5.0 Conclusion And Summary

This unit identifies forms of law enforcement in postcolonial Africa. The two main forms are official government and unofficial indigenous law enforcement. Further, the unit uses Nigeria to illustrate the nature of the interactions and relationship between official governmental and unofficial indigenous law enforcement. Overall, there is lack of coordination between the two principal avenues for law enforcement; they tend to operate with little or no effort to strengthen each other. The official governmental system – with the huge financial and other State resources at its disposal – shows little regard for the unofficial indigenous law enforcement. This is so despite the fact that the unofficial indigenous system plays an invaluable role in social control. It seems that the greatest law enforcement challenge facing most postcolonial African States is over-reliance on Western standards in attempts to address Africa's postcolonial social control needs.

The African writer, Ali Mazrui, once advised African countries to re-conceptualize "development" for their use. According to him, these countries should redefine development to suit their individual indigenous needs. A new definition would likely, and I submit should, differ from the European and North American (Western) meaning. The characteristics of western "development" reflect Western history, belief, culture, and ideals. An African-based definition of development should be grounded in African history, tradition, lifestyle, and future.

Even though there are likely to be common features of development between Africa and the West, the need to conceptualize a divide between its African and Western meanings. Mazrui's counsel leads to the logical view that effective law enforcement in an African postcolony, such as Nigeria, requires the following. One, an official State understanding and acknowledgment of the current anomic (confused) social control condition in which the process of socializing the average Nigerian differs starkly from the behaviour standard imposed by the official English-style legal system. Two, honest efforts by state social control agencies to synthesize and blend the imported English-style law enforcement system to Nigeria's indigenous law enforcement systems widely available and applied in all parts of the country, while borrowing useful and relevant ideas from other African and world societies.

Okafo (2005) argues that the social control process in Nigeria is in a condition of normlessness. This means that the governing rules of the Nigerian society are conflicting, confusing, and/or differ from the cultures and expectations of many, if not most, Nigerians. The average Nigerian is socialized from birth in is/her cultural expectations and standards of behaviour. These expectations and standards are dtypically rooted in the Nigerian's traditions, customs, and native laws. At a later stage in his/her life, the Nigerian is confronted with English-style rules and regulations that diverge from the previously learned indigenous norms. The

resulting conflict situation creates an anomic condition with legitimate questions about the proper standard of behaviour in the society. Okafo (2005) recommends the following as ways out of this anomie:

> For a more effective and efficient social control in Nigeria, the official Local, State, and Federal governments, through their respective legislatures, should pass legislations adopting the country's native customs and traditions (customary law) as the *Grundnorm* (basic law), that is, the fundamental sources of Nigerian law. Formal adoptions (by legislations) of the native customs and traditions will strengthen the customs and traditions. Thereafter, other sources of laws, such as English law, will be used to supplement the basic Nigeria law. While urging the proper Nigerian authorities to reinforce the country's native customs and traditions over the English law, it is equally important to point out that unreasonable, unpopular, and outdated customs and traditions should be discarded and replaced with more progressive principles. Like every postcolonial society, Nigeria should strive to achieve a modern society that maintains a reasonable balance between the welfare and freedom of its citizens and the progress and orderliness of the State. Of course, the Nigerian Bar and Bench will be

> invaluable partners in these efforts to reengineer law and justice in the country and deemphasize English law.

The present article strongly reasserts the above recommendations. Effective policing of Nigeria, an African postcolony, should be based primarily on the enforcement of laws and standards indigenous to Nigeria, through enforcement means indigenous to Nigeria. Foreign laws, standards, and means of enforcement, where and to the extent appropriate, should serve as opportunities to make the indigenous-based system better.

6.0 Tutor-marked Assignments

(i) Having read this unit, what is your opinion as regard revamping traditional mechanism of crime control in modern African State.

(ii) Enumerate factors that could make Indigenous mechanism of crime control prevail compare with formal mechanism.

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MODULE 4

INTRODUCTION

Unit 1 The use of traditional and informal mechanism of crime control (The resurgence of "Ayelala" in Benin Kingdom and other trado-Indigenous mechanism for crime control as a study case)

CONTENT

1.0 INTRODUCTION

This unit entails a lot of intrigues as regard the indigenus use of (mechanism) compare with validated othordox social control mechanism. It is a topic that has held the entire nation of Nigeria and particularly Benin City in Edo State spell-bound and agigated for over some months in the past. In the early 1980's, with an apparent revolution in Christian religious activities in the city of Benin, the belief in traditional divinities was seemingly abandoned for the Christian faith.

Many saw this as a sign of great change in the historic City of Benin which was hitherto known for its traditional religion and culture. It can be rightly said that the reason Benin City is still popularly referred to as "the ancient city" could be the people's strong affinity to traditional deities and expression of traditional values, culture and religion.

In this unit, we seek to examine the resurgence in the belief in Ayelala, a traditional deity, and the ever increasing erosion of confidence in the criminal justice system which comprises the police and the judiciary in Nigeria. We also attempt to proffer far-reaching recommendations that will help to properly accommodate and regulate the practices connected with Ayelala belief; a belief now becoming widespread among the Bini speaking people of Edo State in Nigeria

2.0 OBJECTIVES

In this unit, a mystical powerful antidote and a panacea to crime upsurge, yet widely conceived in pre-modial era among African setting is conceptualized.

Among these remarkable antidotes (Indigenous crime control) "Ayelala" meaning "the world is incomprehensible", "Age grades" and even "religion" were viewed in this unit.

The under-lying points underscored in this unit is meant for you (the reader) to really appreciate various mechanism that are obtainable and put in practice in African traditional setting before the incursion of European (formal mechanism) of crime control.

3.0 Position and Size of the Binis in Edo State

One unique feature of Edo State is the seeming homogeneity of the people with similarities in culture and language of the various constituent groups. Presently, there are eighteen (18) local government areas in Edo State with the state capital located in Benin City, Edo State has an area of 19.794 square kilometers and a provisional population of 2,159,848. It lies roughly between longitude $05^{o}.04^{o}$ and $06^{o}43^{o}$ E and latitudes 50^{o} 44^{o}N and 07^{o} 34N. It has boundaries with Kogi State to the north, Delta State to the south and Anambra State to the east.

The Bini speaking group appears to be the single largest group in Edo State as they can be found in the areas making up the Edo South Senatorial Distric made up of Egor, Ikpoba-Okha, Oredo, Orhionwon, Ovia North-East, Ovia South-West and Uhumwode Local Governemtn Areas. The Oba of Benin, the paramount traditional ruler in the State, is the revered custodian of the custom and tradition of the people.

The reality of Benin City, as it is in most communities in Africa, is that in spite of the vast changes occasioned by Christianity, Islam and modernity, there seems to have been a persistence of traditional religious belief and practices. Ezeanya (2001) aptly refers to this attitude as "the endurance of conviction. A walk through the streets of Benin City today, will clearly reveal a return to traditional religious practices as calabashes of traditional religious sacrifices litter every nooks and crannies of the city.

Self-Assessment Exercise 3.1

Briefly write a short note on historical background of Bini as stated in this unit.

3.2 Ayelala: Origin and Function

Ayelala is a deified goddess whose place of origin can be traced to the area of Ilaje in Ondo state, Nigeria. According to Awolalu (1980), the cult of Ayelala arose out of the vicarious sacrifice compensation of the life of an Ijaw slave woman, killed in substitution for the atonement of the sin of a run away Ilaje adulterous man. As a scapegoat, the Ijaw woman was made to bear the consequences of the sin of another who has run to take asylum among the Ijaws; an act which caused serious disaffection between the Ijaws and the Ilajes.

While being sacrificed, the slave woman, in great pain and anguish, could only mutter the words “Ayelala” meaning “the world is incomprehensible” or “the world is a mystery”. From then on, Ayelala became the name by which she was known and called.

It is vital to add that before sacrificing her, a covenant of reconciliation and ritual cleasing was made between the Ilajes and Ijaws on the following terms, amongst others:

- Ayelala was to kill any member of the parties to the covenant who plans evil against one another;
- Ayelala was to punish with death any member of the group who practices stealing, sorcery and withcraft against each other;
- All contractual relationship between the two consenting communities was to be faithfully and

honestly executed under the watchful guidance of Ayelala who was invoked to kill covenant breakers.

Before she was finally sacrificed, Ayelala the slave woman made a solemn vow to witness to and punish non-compliance to the terms of the covenant and all future covenants to be reached in her name. Ayelala eventually became deified after her death when it was observed that several deaths occurred in default of the covenant sealed on Ayelala's blood. In consequence of this, Ayelala became popular as a deity who dispenses justice and protects morality. Her cult started spreading far and wide, even to the Benin kingdom.

Self-Assessment Exercise 3.2

Present an overview of the Origin and functions of Ayelala and the contextual meaning.

3.3 The Nigerian Police and Ayelala Challenge

In traditional societies where written laws do not exist, informal sanctions deter deviations from the societal norm. However in modern and more socially complex societies, the police have emerged as the primary means for promoting and maintaining social order.

In this modern era, the police have developed into a body of individuals who are organized to investigate breaches of the law and preserve the peace. In most industrialized societies, police functions include traffic control, crime prevention and investigation. Different security apparatuses generally exist for gathering political information, counter espionage and the protection of top state officials.

Even before the advent of the modern day police, our traditional societies has in place, adequate machinery for the preservation of peace and harmony. According to Emiola (1997), in such a society where the king is the paramount ruler, he and his chiefs in council ensure obedience within that community. Age grades and their allies were also used in maintaining law and order. In spite of their rudimentary nature, there was orderliness and peace.

In most traditional communities, "nature" restrained circumscribed anti-social behaviours. These restraints include the fear of retaliation by offended or injured persons, social sanctions imposed by gossip and opinion, customary beliefs and law which include the invocation of ancestors and spirits and other institutional, economic and moral pressure exerted by communities.

Similarly, in many communities, religion played a very important role in the maintenance of law and order. Religious offences attracted public attention and amounted to social abominations. The significance of religion in the maintenance

of law and order was clearly evident even in the Muslim parts of Northern and Western Nigeria. Among the Gwari and Soli people of Verre in what was then the Yola province, religion was the very basis of law.

The modern Nigeria Police Force is largely a product of colonial intrusion into the soil of Africa. According to Tamuno (1971), "An examination of the origins, development and role of the British inspired police forces in Nigeria reveals that they were shaped by the nature of European in the country and the reactions of indigenous people to their activities". One long standing European interest in West Africa has been commerce. The European colonialists sought to encourage "legitimate" commerce in palm produce and other raw materials for European factories as well as create markets for their finished products.

In 1917, the government enacted a police Ordinance which provided uniform rules and regulations for the combined police forces. Perhaps, the most significant event in the life of the police occurred on April 1st, 1930 when it became known as the Nigeria Police Force (NPF) with the amalgamation of the Northern and Southern Protectorate Forces. A combination of the 1947 and 1951 Constitution gave birth to the regionalization of the Nigerian Police under the command of the Inspector General. Later in 1954, it became known as "Federal Force" when the Lyttleton Constitution came into effect.

However, a military coup in January, 1996 brought about significant changes. A decree issued by the Military Government stated that "All Local Government Police Forces and Native Authorities Police shall be placed under the overall command of the Inspector General". The Military government embarked on further reforms which saw to the conversion of the other police forces into a single Nigeria Police Force at the end of 1969.

The current legislation governing the Nigeria Police is the Police Act CAP 359, laws of the Federation of Nigeria, 1990 as well as the Constitution of the federal Republic of Nigeria. 1999. it would be recalled that the Police Act was recently (in 2005) amended under the present democratic dispensation and the name "Nigeria Police" replaced the "Nigeria Police Force."

The Nigeria Police has always been in the news. Of a truth, the citizens of Nigeria seem to have lost confidence in the ability of the police to prevent and detect crime. For example the spate of high profile crimes and robberies still remain unabated. The question: who killed Chief Bola Ige, the then Justice Minister and A.K. Dikibo and a host of other prominent politicians who died by assassins bullets, still remain unanswered.

Apart from the fact that the modes of recruitment and training are poor, the police lack the sophisticated equipment required to perform investigation. Corruption, it is generally acknowledged, has eaten deep into the fabrics of the police.

Afolabi(2005) noted that “there is hardly any need to make any suggestion to a police force that has become so unconscionable, deeply steamed in corruption and ossified in methods”. He concluded in a heart rendering note that “We certainly do not yet have the policing that this country and its people deserve”.

The manners in which our police handle matters have created room for suspicion and consequently the lack of confidence in their ability. Efficiency on the part of the police in Nigeria today, is nothing to write home about. It takes years before a simple investigation can be completed.

However, unlike the police, the use of Ayelala has proven to be very efficient. A case in point is: sometimes in 2005, the Oba market in Benin City went up in flames. As the fire raged, hoodlums in the area had a field day looting goods belonging to traders in the market. More disturbing was the fact that many shops not affected by the inferno were found broken into and emptied by looters. The next day, Chief John Osamede Adun, a.k.a “Born-boy”, a prominent citizen in the area, invited the priest of Ayelala, a goddess widely revered and feared in Benin Kingdom. The Chief priest of Ayelala consequently issued a public warning that as many as have taken away goods which do not belong to them should return same immediately or face the wrath of Ayelala. The following morning, goods earlier carted away resurfaced in the market. The same feat was re-enacted when the popular Uselu Market was gutted by fire a few months after.

Also, it appears that unlike the conventional police, Ayelala cannot be bribed. Despite the monstrous state which corruption has assumed in Nigeria, there has not been any allegation of corruption against Ayelala. One worried about is the incessant case of police brutally, extra-judicial killings and a host of other atrocities committed by the police. These are unknown when Ayelala is consulted. At least the case of "Apo six" which involved the death of six traders, in the mechanic village in Abuja in May 2005, in the hand of policemen, is still in our memory. This situation was clearly depicted by Tamumo (1971) when he noted that

> *The traditional peacemaker (mostly priests, as in the case of Ayelala) did not employ violence and carried out their purpose – the ending of hostilities – without breaking limbs. By contrast, the modern police riot squads appeared harsh and bereft of the religious sanctions which had reinforced the traditional apparatus for controlling public disturbances.*

More disturbing about the police, is the recent Supreme Court pronouncement where the court held that Nigeria Police have discretion to investigate allegation of crime made against them them. Accordingly, the Supreme Court noted in the case of Fawahinmi V IGP that the police have discretion whether or not to conduct investigation into any allegation of crime made to them. And the court will not interfere if, on the facts of a particular case, the discretion is properly exercised. There is therefore nothing in section 4 of the Police Act which denies

the police of any discretion whether or not to investigate any particular allegation, or when they decide to investigate to do so to its logical conclusion. Thus the police have discretion in appropriate circumstances in the way they carry out their duty. The need for the exercise of discretion in such a matter may arise from a variety of reasons or circumstances, particularly having regard to the nature of the offence, the resources available, the time and trouble involved and the ultimate end result. It may well be balancing options as well as weighting what is really in the public interest. The discretion is not limited to the method of enforcement of police powers. Thus, it s inconceivable that such wide powers and duties of the police must be exercised and performed without any discretion left to responsible police operatives.

The effect of this pronouncement is that the court has thrown open the floodgate of inefficiency and a litany of excuses for the police in Nigeria at the expense of the citizens.

Self-Assessment Exercise 3.3

From the context of this unit would you accept that the traditional and informal mechanisms of crime control is justifiable, Justify your argument.

3.4 THE JUDICIARY AND AYELALA'S CHALLENGE

The judiciary is usually regarded as the third arm of government. Under the constitution, the judiciary is created by virtue of Section 6 of the Constitution of the federal Republic of Nigeria, 1999. the hierarchy courts proceeds from the Supreme Court to the High Courts of the various states usually known as "superior court of records". While Magistrate, Area and Districts courts are usually regarded as "inferior courts of records". The courts are vested with jurisdiction to determine justifiable controversies between citizens and between citizens and the state.

It is ideally assumed that the judiciary being the final arbiter and an unbiased umpire is the last of hope of the common man or woman as the case may be. His or her access to court when his rights were threatened or infringed upon was expected to be unfettered.

As a result of the classic attributes of the courts, Sagay (1995) a Professor of Law and a reputable legal practitioner gave thumbs up to the judiciary.

Also, a commentator was quoted by Igbonivia (1997), a Professor of Criminology, as making commendations of courts in the following words:

Once it was the envy of the continent. Cloaked in an aura of reverence and manned by lofty judges, the Nigeria Judiciary passed judgment in predictable fairness. The judges dispensed justice like gods – relief the aggrieved and reprieve to the

guilty, each according to his deeds. There was no higher state to which anyone could aspire.

This fact "lends credence to the most cynical appraisal of the work of judges throughout the land. It is confidence in the men and women who administer the judicial system that is the true backbone of the rule of law… It is the nation's confidence in the judge as an impartial guardian of the rule of law".

However, in spite of all these praises, their have been a decline in the confidence reposed in the judiciary that has stepped gingerly into a seeming wilderness. The pitiable condition in the judiciary is clearly chronicled in the book entitled "The Nigerian Judiciary: The Departing Glory", by justice P. Odo Effiog Bassey (2001). As a result of this departing glory in the nation's judiciary, the federal government decided to set up the Justice Kayode Eso led panel to examine and proffer solutions to the ebbing institution. Some of the ills found in the judiciary as outlined by the panel include: corruption of judicial officers, long and tortuous litigation processes, expensive legal procedures, myriad and diverse court rules, poor infrastructures, inadequately motivated judicial personnel, etc.

Particularly, the menace of corruption was clearly highlighted by the Supreme Court in A.G Ondo State vs. A.G Federation. In that case, Uwais, CJN, said that "corruption is not a disease which afflicts public officers alone but society as a whole". In

connection with corruption in the judiciary, Smith (1992) noted that "Nations fall when judges are unjust, because there is nothing which the multitude is worth defending.

Beside the above mentioned malaise, the undue technicalities and delay in the administration of justice has made the citizens resort to the consultation of Ayelala's dispensation of justice is "instant" within one week of effective consultation, results of who the culprit is must have emerged. There is a no technicalities involved.

Moreover, the ideal concept of fair hearing which is expected to be very fundamental and sacred in the administration of justice is observed when Ayelala is consulted. Both parties are allowed to state their case to the hearing of the priest who in turn calls on the deity to dispense justice accordingly. In a situation where one of the party, is not available, emissaries are sent to educate him on why he must be present. Even though he does not show up (although most of them normally show up for fear of the wrath of the goddess), the party present is allowed to plead his cause to the satisfaction of the goddess.

Unlike the courts which sometimes claim that they lack jurisdiction to entertain certain matters before them; and that if they do, it will amount to a nullity, the reverse is the case with Ayelala. The scopes are category of matter entertained by Ayelala is never closed. Thus, citizens find it convenient to settle whatever dispute they may have by consulting Ayelala.

However, the efficacy and operations of Ayelala remains mysterious and enigmatic yet appreciated and patronized by the people when a resort to the conventional justice system appears frustrating.

4.0 IS INVOCATION OF AYELALA A TRIAL BY ORDEAL?

A logical aftermath of a long and consolidated occupation, control and subjection of any country by an alien people and government, however benevolent, is the inevitable imposition of its culture on such country. The resulting effect is the supplanting and obliteration of the indigenous laws and custom which are usually regarded as primitive, barbarics and unworthy of preservation in the light of the civilization and technological achievement of the colonizing power. The culture of a people is dictated by many factors, predominant among which are their religion, marriage forms, political and social organization, economic consideration etc.

Oracle and supernatural forces were basic features of the pre-colonial system in Nigeria. In many traditional societies, custom required one who committed a murder or some other heinous offences to flee his community, obviating the need for criminal investigation. However, when investigation did become necessary, the intimacy of the smaller communities often made them fairly easy. Through a combination of sleight,

hypnosis and psychology, diviners and medicine men often succeeded in fishing out the offending parties.

In addition to diviners, people also employed oracles and trial by ordeal in the inestigation of crime. The Aro long Juju (Chukwu Ibinokpai), Igwe-Ila-ala of Umunoha and Agbala of Akwa were some of such popular oracles existing in Igbo land. In Benin, Awosunoba was one of such oracles. Among the Isokos to the west of the Niger, their Uzere Juju was found very useful in the detection of crimes. A trial by ordeal according to Egbarevba:

> is a recognized method in primitive African societies, of detecting a criminal. It has its place in the Bini law and many Binis firmly believe today that when the court has entirely failed to clear up a matter, trial by ordeal is an unfailing method of finding the criminal

However, with the coming into effect of the Criminal code and penal code which governs acts or omission proscribed by the state as offences in the Southern and Northern Nigeria respectively, it is now an offence to engage in a trial by ordeal. Particularly, Section 207-213 of the Criminal code 36 makes it an offence. The effect of the above sections is that mere presence at the scene or agreement to partake in a trial by ordeal is an offence with punishment ranging from one year imprisonment to death sentence. Note that the Act is silent as to the meaning of a trial by ordeal; rather it explains act or omission that may constitute it.

A careful examination of the above statutory provisions clearly reveals that the use of Ayelala is not a trial by ordeal. Firstly, under the Schedule of the Criminal code, Ayelala is not part of the unlawful societies prohibited under section 62 (2) (ii) of the code. Similarly, Ayelala is not a secret cult within the contemplation of Section 315 of the 1999 Constitution of Nigeria.

Can it be correct to say the invocation of Ayelala is contemplated by the criminal code to be an offence? Of course, no! The reason for this, being that the invocation of "Juju" is not an offence. Thus, in Udokwu vs. Onugha, it was held that the accused was not guilty for invoking a Juju which resulted in the death of the deceased. The decision of the court was premised on the provisions of Section 36 (10) of the 1999 Constitution which prohibits punishing a citizen for an act or omission which is not an offence and for which no punishment is prescribed in the statutes.

The belief in the efficacy of a deity, divinity or "juju" and in like manner Ayelala has never been in doubt even by the courts. In Ekwo vs. Enechuwkwu, Sutton P., acknowledging this fact held that:

> I think it is important to remember that the accident occurred in Nigeria where it is common knowledge that a considerable proportion of the population still holds a

strong belief in their natice doctors. In my view… it is the wide spread existence of it which is relevant…

Also in R V Odo, the court commenting on the belief in juju noted that: a person may lawfully hold a belief whether based on superstition or not, that by some intrinsically innocuous and inoffensive act, he can influence a decision of a court in his favor. The mere doing of such act cannot constitute an offence…

The above case involved a native who had planted juju around the court premises in order to influence the decision of the court in his favor. In support of the fact that the consultation of Ayelala is no offence, neither is its invocation, Awa kalu, SAN submitted that;

All discerning readers must be familiar with the point that two streams of law are pre-eminent in our legal system. Thus, apart from received English Law, epitomized by common law, the statutes of general application and doctrines of equity imported by colonial powers, what is generally referred to as "customary law" is allowed certain efficacy but in a judicially circumscribed manner. In that connection, mediation and arbitration have continued to survive as instruments for dispute resolution. A lot of faith was placed on the efficacy of juju swearing. All that traditional society required for the establishment of the incontrovertibility of any disputed fact was for one of the disputants to swear to an oath upon pain of punishment by juju gestation period for testing the

effectiveness of the juju was generally warranted and once the agreed period expired without the "swearer" dying, or suffering any condition that was not ordinarily explicable, then the fact was unconditionally regarded as proven. Juju swearing in the traditional system operated as estoppels.

The resort to Ayelala rather than the conventional methods of seeking justice was given further credence when Dennis Szabo notes that "this ambiguous situation gives rise to the fact that in rural areas – and to lesser degree in the urban centers – the people persists in resorting to their own justice to settle their disputes".

It has been said that the reasons the courts are unwilling to acknowledge belief in tradition deities to avoid setting a dangerous precedent to recognize superstitions.. thus in R V Ebong it was held that "…find otherwise would be getting perilously near to the fallacious theory that a genuine belief in withcraft might be a possible defense to a charge of murder…" It does not appear that the courts have really evolved a deliberate policy to break away from this rather painful colonial past, so as to give the rightful place to the progressive development of customary law in a country replete with customary traditional practice in its entire polity.

Self-Assessment Exercise 4.0

Access the dichotomy between conventional justice system and Traditional and Informal Mechanisms of crime control (i.e. Ayelala vs. modern/contemporary system).

5.0 SUMMARY AND RECOMMENDATION

It is obvious from the trend of things that the invocation of Ayelala to settle all forms of dispute has come to finally stay in Edo State, Nigeria. However, what is more important is the need for our conventional legal system to recognize and moderate its practices. It is on this premise that we would re-state here the admonition of the court in Osula vs. Osula to the effect that the Bini, like some other tribes in Nigeria has some notorious traditions and norm: some peculiar to them, others in common with other races in some part of the world, which cannot be easily written off by mere legislation. Thus, to legislate against and prohibit the consultation to deities like Ayelala, would lead to serious disorder that would make governance and obedience difficult. It is in this light that legislation should be carefully drafted to accommodate and regulate its practices.

Consequently, the provision in the Criminal and penal code which seeks to impliedly prohibit these practice should be repealed. Customary practices should be given its pride of place in the scheme of things. It is high time we broke away from the painful colonial past and tailor our laws to meet with our beliefs and peculiar circumstances.

Also in matters of superstition, which come before our courts, the court should deem it fit to consult medium like Ayelala for clarification rather than petitioning such matters. After all, under the Evidence Cap 112, Laws of the Federation, 1990, opinion of assessors on customary matters are admissible.

The police and the judiciary should be reformed again so as to bring back those glorious day when citizens had confidence in them. Delays in trial should be tackled headlong. Corruption and bribery should be checkmated and such other factors responsible for the decline in the patronage of the police and judiciary, be phased out.

To also stem the menace of bribery and corruption, it is suggested that law enforcement agents and the judiciary should swear on oath administered by the priest of Ayelala. The implication is that the fear of the wrath of the goddess would deter them from such ignoble acts.

Finally, in the words of Usi Osemwowa, we wish to "call on the Federal Government to make traditional institutions a fourth tier of legislative and administrative authority over matters beyond the capabilities of the police and judiciary in each state". By this, this weaknesses of the conventional justice system in Nigeria would have been effectively remedied.

Self-Assessment Exercise 5.0

Justify the need for the incorporation of Traditional and Informal mechanisms of crime control as discussed in this unit.

6.0 TUTOR-MARKED ASSIGNMENT

1. Explain the functional role of Traditional and Informal mechanisms of crime control
2. Suggest ways in which the federal government of Nigeria could bridge both Informal and formal mechanism of crime control
3. Simply cite and briefly explain a “case study” whereby traditional and informal mechanism of crime control was effectively applied.

7.0 REFERENCE/FURTHER READINGS

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MODULE 5

INTRODUCTION

Unit 1 The peace building functions of traditional/informal mechanism of crime control

CONTENT

1.0 INTRODUCTION

The peace-building functions of traditional/informal mechanism of crime control.

Existing accounts of experiences and scholar works allow situating the potential functions of traditional and informal mechanism in peace-building processes, in particular in post-conflict contexts. These concern in particular gives support to the different dimension of crime control by:

- Providing access to crime control and preventing a resumption of violence;
- Fostering social trust and community reintegration;
- Contributing to transitional justice;
- Supporting judicial system reform/(re)construction.

2.0 OBJECTIVES

This concluding unit draws a critical overview of traditional and informal mechanism of crime control. A thorough comparison was carried out between (formal and informal) mechanisms.

To this end, the reader is expected to be able to appreciate and understand better the role of traditional mechanism in combating crime, how effective and practicable it could be,

ways of ensuring its sanctity in the contemporary modern day society, its criticism and its laudable achievements.

3.0 Access to justice and prevention of violence

The relevance of traditional/informal mechanism of crime control in the post-conflict settings stems from the idea that traditional/informal control albeit often seriously affected by violence, are likely to remain more intact than formal ones. "According to a DFID report on "non-state control systems". It is likely that those "will have operated in some form throughout the conflict period, and may play a critical role in the immediate aftermath of conflict where the restoration security and rule of law is a high priority. Indeed, the formal control system is often devastated or severely impaired by the war and frequently does not have the capacity or legitimacy to fill the gaps in social ordering and conflict resolution. It is generally estimated that rebuilding a formal justice system takes approximately two decades. In the interim, the traditional/informal one provides viable (if imperfect) modalities of dispute resolution, contributing to the prevention of the resumption of violence by not letting grievances accumulate, aggregate and go unaddressed.

Traditional systems operating outside the confines of the state are usually the primary form of social control, dispute resolution, and reconciliation, especially with regard to familial

matters and land tenure issues which are numerous in the aftermath of a war and are exacerbated by the displacements of population and return of refugees. Traditional mechanisms exist and have done so for years, providing a strong system of both governance and reconciliation, outside of the formal mechanisms imposed by the Western world. In an insightful study of local justice practices in rural Peru, Kimberly Theidon reminds us that, ultimately, "Reconciliation is forged and lived locally, and state policies can either facilitate or hinder these processes. Some estimates that in developing counties eight to ninety percent of civil matters are handled by the traditional/informal social control mechanism.

As a UNDP report on informal control systems notes. "In post-conflict countries, where formal mechanisms may have completely disappeared or been discredited, informal systems of dispute resolution may be crucial to restoring some degree of law and order, and they may be all that is available for many years. If there are no viable means of resolving societal disputes, the alternatives are either violence or conflict avoidance – which in itself is likely to lead to violence later." Numerous studies have shown that when neither formal nor informal mechanisms are functioning, human rights abuses and serious conflicts are more likely to occur. In a study of formal and informal dispute resolution systems amongst poor segments of rural Colombia, the incidence of communities taking matters into their own hands through vigilantism, "mob

justice" or lynching is more than five times greater in communities where informal mechanisms are no longer functioning effectively and state presence remains limited. In other circumstances, breakdown of local frameworks can lead to different types of lawlessness.

Self-Assignment Exercise 3.1

Evaluate how crime is control by se of informal/traditional mechanism, most especially in a post-conflict settings.

3.2 Traditional/informal mechanism crime control.

Through its immediate post-conflict functions, traditional/informal control systems are considered to increase significantly people's access to justice, in particular for the poor and disadvantaged. Access to justice is defined as "the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards. Four main characteristics of traditional/informal justice systems explain their contribution to better access to crime control.

- Use of local languages: the language(s) used in traditional/control systems is local and thus familiar to the average person, whereas the formal system generally

uses only the official language(s) of the state, which may be unfamiliar to many people living in rural communities.

- *Geographical proximity:* institutions of the formal control systems are usually located in the capital city or regional capitals, and are thus geographically remote from people living in rural communities. Traditional/informal control systems, on the other hand, are located in villages and are geographically easily accessible to people.
- *Cultural relevance*: formal legal proceedings can be complicated and confusing, whereas traditional/informal ones are more familiar and easily understood; it has also a better chance to fit the priorities of the communities and local implications of a conflict. Therefore, its verdicts may be better accepted.
- *Costliness:* referring to the formal control system can be costly and time-consuming because it often entails traveling long distances, paying transportation costs, and legal fees, all costs that are generally at the very least reduced with the traditional/informal control, this system can also be more efficient as it is generally not bureaucratic.

In short, "informal control are often more accessible to poor and disadvantaged people and may have the potential to provide quick, cheap and culturally relevant remedies." Moreover, in post-conflict societies, people may use traditional and informal control systems not only because these systems

outperform formal ones but also because they often deal with issues that the formal justice system does not, or they find solutions and deliver remedies in ways that are more relevant, effective or socially acceptable.

“Informal control are prevalent throughout the world, especially in developing countries. They are the cornerstone of dispute resolution and access to justice for the majority of populations, especially the poor and disadvantaged in many countries, where informal control systems usually resolve between 80 and 90 percent of disputes.

Self-Assessment Exercise 3.2

Itemize and briefly explain the significance of informal/traditional mechanism as against formal system as noted in this unit

3.3 Social Trust and Community reintegration

It is generally believed that a unique contribution of traditional/informal control systems is that they foster social trust and community reintegration in the aftermath of mass violence. This belief stems from the observation that

traditional justice is almost invariably based on communitarian notions of order and society, meaning that the primary issue at stake is the well-being of the community at large, and not only the interests of the victim. In such communities a dispute between individuals is perceived as "not merely…a matter of curiosity regarding the affairs of one's neigbour, but in a very real sense a conflict that belongs to the community itself. Each member of the community is tied to varying degrees, to each of the disputants and, depending on the extent of these ties, will either feel some sense of having being wronged or some sense of responsibility for the wrong. In other words, "a conflict between two members of a community is regarded as a problem which afflicts the entire community. In order to restore harmony, therefore, there may be general satisfaction among the community at large, as well as the disputants, with the procedure and the outcome of the case. Public consensus is, moreover, necessary to ensure enforcement of the decision through social pressure." Justice, in this view, is essentially concerned with the restoration of a community's moral order and social harmony.

Reasons for Not Using the Formal Control System

1. Mistrust of the law, fear, and intimidation.
2. Lack of understanding-language issues, unfamiliarity of formal procedures and court atmosphere, low legal literacy.
3. Unequal power relations

4. Physical and financial inaccessibility;

5. Formal systems are culturally uncomfortable

6. Formal system lacks legitimacy – can be complicit in conflict and past oppression and corruption

7. It usually takes a long time to process cases, opportunity costs

8. Going through the formal system may lead to more problems between the disputing parties

Source: *Ewa Wojkowska, Doing Justice: How Informal Justice Systems Can Contribute (Oslo: United Nations Development Programme (UNDP) – Oslo Governance Centre, December 2006), 13.*

Social control according to local expectations and by local institutions may also be "more highly valued than that of state law and tribunals." Indeed, "in many contexts , the local law is no more than a paper somewhere which has nothing to do with the reality and the informal rules that have been developed, along the history, by the population." Acknowledging the existence of those rules and modalities may then help restore a sense of justice for local people.

Social justice in a strictly retributive sense (that is, meting out punishment) is generally not the exclusive or even primary objective of traditional/informal systems. As one report on traditional justice in Africa points out, "the traditional African sense of justice is not simply about isolating the retributive

aspects of justice, as it is in the Western model. Instead, retribution is but one part of an overarching process that also encompasses rehabilitation, reconciliation, compensation, and restoration. In other words, it is not just that retribution equals justice. Indeed, justice itself is one component of restoring perpetrators back into harmony with the values of a community." "While the more formalized Western models allow for only one form of justice – retributive, restorative, or reparative – these traditional institutions seek to combine various forms of these elements in keeping with the values of the community." However, it is worth noting that this distinction between retributive and restorative justice is not always so clear as both national and international tribunals (in particular the International Criminal Court) have progressively carved out a larger role for the victims and some may provide for reparations.

This holistic approach also includes the utilization of ritual, rites and symbols. "Genuine acceptance of a ruling is recognized as essential for the ending of hostilities between disputants and the restoration of harmony within the community. In order to confirm acceptance by both parties, they may be expected to eat from the same bowl or drink from the same cup. This forms part of the conciliatory approach intrinsic to African traditional arbitration. It confirms the agreement and makes it notorious. The public also pertakes in the eating and drinking as an expression of the communal element inherently present in any individual conflict and of

their acceptance of the offender back into the community." A large diversity of rites and symbols are used in different cultures. These range from very elaborate celebrations and ceremonies to more common rituals. These may include blood pact alliances, marriage, intimate friendships, and communal celebrations to consolidate peace. Others include eating and drinking together, the shaking of hands and the exchange of gifts to show restoration of peace, as well as the slaughter of animals, and the exchange of dried coffee berries.

As a result, traditional/informal control system is thought "to strengthen levels of social trust and civic engagement within these societies, for if the people believe in and trust such mechanisms, it is believed that they will participate in the activities promoted by them." Because traditional/informal control systems are by definition local and community-based, it is believed that they will foster the reconstruction of social trust among survivors. "Traditional and informal control systems are best suited to conflicts between people living in the same community who seek reconciliation based on restoration and who will have to live and work together in the future.

Self-Assessment Exercise 3.3

Pin-point some of the "symbolic gesture" being expressed as mark of reconciliation and affection as a means of social control of crime

3.4 Transitional Justice

While a detailed discussion of transitional is beyond the scope of the present section, it is important to briefly address the evolution of the field and its now important link with traditional social control. Broadly speaking, the field of transitional justice can be said to have witnessed three major trends: a) the post-world war two internationalization of justice as exemplified by the trials of German and Japanese war criminals; b) the politicization of justice in the 1980s and early 1990s through the establishment of non-judicial instruments such as truth commissions, especially in South America; c) the present period of hybridity/hybridization, where various transitional justice mechanisms (such as prosecutions, truth commissions, and local/"traditional" mechanisms) are simultaneously applied, such as in the case Rwanda, Sierra Leone, and East Timor.

The current interest in traditional control system stems from this third major trend in the evolution of transitional justice and the growing sense of disenchantment with international judicial approaches to post-conflict justice, namely the international tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR). As Diance Orentlicher, an international lawyer, asks, "Given the extraordinary range of national experiences and cultures, how could any one imagine there to be a universally relevant transitional justice? Put differently,

“traditional justice is not the monopoly of international tribunal or of states: communities also mobilize the ritual and symbolic elements of these transitional processes to deal with the deep cleavages left --or accentuated--by civil conflicts.

But the subject of traditional approaches to transitional justice is quite new and has received little attention until recently: “Despite the burgeoning literature on transitional justice, scant attention has been paid to local justice mechanisms. The studies that do exist ate mostly theoretical macro-level assessments of state-initiated mechanisms, rather than empirical, micro-level studies of how those mechanisms are actually functioning at the local level. There is even less scholarship on post-conflict dispute settlement mechanisms and reconciliation practices initiated at the local level, which, at times, may conflict with those initiated by the state.

That said, some experiences with traditional social mechanisms in a number of post-conflict settings, especially Rwanda, led some to question their legitimacy and effectiveness. In particular, some question the notion that traditional and informal control systems can be used to deal with grave human rights violations, committed on a massive scale. Most of these systems were predominantly crafted to deal with property and commercial disputes, family matters and inheritance, not such serious crimes as murder, rape, torture, disappearances or other grave crimes inflicted on civilians in modern armed conflicts. To expect systems to take up such matters, critic argue, is bound to lead to

disillusionment and to distort their purposes and advantages. "Normative approaches are thus gradually giving way to more realistic, empirically based assessments of the potential role of traditional mechanisms within the broader reconciliation and transitional justice policy framework.

Self-Assessment Exercise 3.4

In what ways has traditional/informal mechanism contributed to formal justice mechanism?

4.0 Judicial System Reform/ (re) construction

Judicial reform and reconstruction in post-conflict settings has recently received greater attention and more donor funding, stemming from the "rule of law revival" and the"rule of law consensus." The animating idea behind this trend is that judicial reform and reconstruction activities advance good governance, promote economic development, and contribute to sustainable peace by providing mechanisms for the peaceful; management of conflicts. Yet judicial reform activities in developing countries in general – and post-conflict countries in particular – have been the subject of important criticism. Critics have labeled the dominant approach in post-conflict settings as "programmatic minimalism": that is, judicial reform and reconstruction activities that are "largely replicable, standardized, culturally inoffensive and politically 'neutral' or

inoffensive, they focus on the technical procedures and institutions rather than laws substances and ethos." Critics have argued that the problem with this technical and legalistic approach is that it fails to address the key obstacles to the rule of law, which are political and cultural.

More often than not, these reform activities seek to resurrect the tangible institutions of a judicial system (courts, judges) without considering the historical specificities of a particular society. "Reforms have often lacked any clear theory about the roles and functions of justice systems, and have failed to consider how successful legal systems in developed counties were actually constructed--including how they gained authority and legitimacy. Local level context and the systems of justice actually operating in many contexts were largely ignored. Yet, this knowledge is important to ensure the adequacy and legitimacy of the system to be reformed/ reconstructed. "Norms and customs are embedded in the rule systems and institutions that govern everyday life, which in turn serve to maintain and reinforce these systems of meaning. Much like languages, rules systems are deeply constituent elements of cultural norms and social structures. The advocates of legal pluralism support such an approach, albeit with a few nuances. This perspective does not necessarily focus on the particular rules applied in situations of dispute; it rather "examines the ways social groups conceive of ordering, of social relationships, and of ways of determining truth and justice. Law is not simply a set of rules exercising

coercive power, but a system of thought by which certain forms of relations come to seem natural and taken for granted, modes of thought that are inscribed in institutions that exercise some coercion in support of their categories and theories of explanation.

Traditional and informal control systems are not exempt from flaws; these should be taken seriously. However, “this does not in any way means that we can ignore their existence. Imposing formal mechanisms on communities without regard for local level processes and informal legal systems may not only be ineffectual, but can actually create major problems. First, the failure to recognize different systems of understanding may in itself be disciplinary or exclusionary, and hence inequitable. Second, there are often very good reasons why many people chose to use informal or customary systems, which should be considered and understood. Third, there is ample evidence that ignoring or trying to stamp out customary practices is not working, and in some cases is having serious negative implications. Fourth, ignoring traditional systems and believing that top-down reform strategies will eventually change practice at the local level may mean that ongoing discriminatory practices and the oppression of marginalized groups, in the local context goes unchallenged. Finally, focusing purely on state regimes and access to formal systems in some ways assumes that such systems can be made accessible to all, while clearly even in the most developed countries this is not the case.”

Self-Assignment Exercise 4.0

Juxtapose how the formal and informal traditional mechanism of crime control can be interlocked for effective management of crime.

5.0 Conclusion And Summary

- The problem is viewed as that of the whole community or group
- An emphasis on reconciliation and restoration of social harmony
- Traditional arbitrators are appointed from within the community on the basis of status or lineage
- A high degree of public participation.
- Customary law is merely one factor considered in reaching a compromise
- The rules of evidence and procedure are flexible
- There is no professional legal representation
- The process is voluntary and the decision is based on agreement
- An emphasis on restorative penalties
- Enforcement of decisions secured through social pressure e.g. age grade and the communal efforts

- The decision is confirmed through rituals aiming at reintegration
- Like cases need not be treated alike

6.0 Tutor-Marked Assignment

1. Present an overview of your understanding of informal/traditional mechanism of crime control

2. Traditional/informal mechanism and formal mechanism of crime control, which one do you consider most effective? Substantiate your claims

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