Economics & Law
ISSN 2682-972X
DOI:10.37708/el.swu.v3i1.2 Volume: III, Issue: I, Year: 2021, pp. 18-37

PROPERTY OWNERSHIP AND CORRUPTION: EFFECT ON SUSTAINABLE DEVELOPMENT OF AFRICA

OLANIYI FELIX OLAYINKA [1]

Abstract

Pre-colonial communities occupying the space now known as Africa reflected "paradise on earth" having men of integrity, selfless, with focus on community development. The bonding of man with land and the invocation of land - based - spiritual powers allowed for easy enforcement of good morals and conduct in communities. The partitioning of Africa, with the break of the existing social-cultural bonding and the consolidation under colonisation of communities in Africa made communal bonding un-sustainable. The African ubuntu concept gave way, turning an average African a potential drain on his community under a "winner takes all" syndrome, just as he grabs property indiscriminately. The western legal systems introduce private property ownership, but the legal systems in practice record huge breaches of the rule of law, truncation of justice and development. The paper precisely investigates whether development in Africa can be attained based on legal systems foreign to Africa, rather than through indigenous legal tradition.

Keywords: *Indigenous legal tradition, access to justice, sustaining development*

JEL Codes: *K110, K420*

Introduction

Indigenous African Communities lived in a state of primitive innocence, in which everyone was related to one another and with brotherly love; agricultural activities were conducted with one focus, being community development. There was communal ownership of land, which promoted equality, brotherly love and family ties, under the concept of ubuntu (Rodney, 1972, p. 58; Cornell & van Marle, 2005, p. 220; Mekonnen, 2010, p. 106). Indigenous Legal Tradition revolved around land, which was the link of man with the past generations and the future generation. The land sustains man from his childhood to adulthood and houses his remains at death (Idowu, 1962, p. 163; Shyllon, 1998, p. 107).

Africa's strength in its culture and the African traditional way of doing things manifest in oral myths, rituals and age-long customs that existed before colonial rule, providing a framework for engagement with the natural and supernatural world (Para-Mallam, 2010, p. 465). Cultural connotations are contained in names of indigenous African, languages, songs, tales, taboos as well as the tenets of the African Traditional Religion (Clammer, 2018, p. 3; Fletcher, 2006; Friedland, 2012, p. 10). The rich African culture reflects in the names of indigenous Africans, which normally confirms the various beliefs of the people and traditional religion; it also covers the indigenous legal tradition and system. All these operate and transmit from one generation to the other by way of oral tradition.

[1]LL.B (LASU), LL.M (Ife), LL.D (Pretoria); Solicitor and Advocate, Supreme Court of Nigeria; Senior Lecturer and Head of Department, Private and Property Law, Redeemer's University, Ede, Nigeria; Formerly, Deputy Registrar (Legal Matters) The Polytechnic Ibadan, Nigeria. E-mail: olayinkaf@run.edu.ng; niyilayinka@gmail.com
ORCID iD https://orcid.org/0000-0003-2335-797X

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The Colonial masters were apprehensive of the efficacious indigenous educational, spiritual, and cultural heritage of the Continent and resolved to substitute with foreign values and concepts (Mehmood, 2018; Babalola, 2020). Eventually, colonialism was enforced in Africa through treaties signed by imperial powers and illiterate traditional rulers, just as the latter were deemed to have relinquished their lands and authority to rule (Ndlovu-Gatsheni, 2015, p. 27; Gunn, 2007, p. 33). The plunder and theft of Africa's heritage, resources and sustainable development played out for the benefit of the colonial powers (Mutua, 2016, p. 161). Once under the colonial administration, the indigenous spiritual and cultural values became subsumed under westernisation, legal pluralism and conflict.

The partitioning of Africa witnessed the injection of new ethnic groups into existing communities to make the existing social-cultural bonding un-sustainable. In the field of religion, Christian religion was introduced to take the place of African Traditional Religion. The indigenous oral education imparted by the old generation on the young ones was replaced by western education which clamours for the elimination of indigenous languages in its mode of teaching. There was legal pluralism as indigenous law, Islamic law operated subject to the provisions of the Common Law (Griffiths, 1986, p. 6; Oba, 2002, p. 817; Taiwo, 2008, p. 190; Durojaye et al, 2018, p. 57).

European presence in Africa infected the African ubuntu bond as the development produces a new social order manifesting "survival of the fittest," "big fish eating fish," "the end justifies the means" values. The societal ills are sustained by the political leadership in Africa as it generally swims in the public sector corruption, under the introduced western legal systems. Olayinka as such stresses on the effect of public sector corruption thus: "However, dwindling state resources hinder the realisation of socio-economic rights, and this position is compounded by misappropriation and corrupt dispositions by public officials" (Olayinka, 2019b, p. 48). Africa's economy suffers a nose-dive, given the rate of public sector corruption, without an effective legal system that can investigate, try and enforce justice.

The hitherto effective indigenous legal tradition ceases to detect the misdeeds of man and thus unable to invoke land – based - spiritual powers to punish unjust activities of man (Idowu, 1962, p. 163; Shyllon, 1998, p. 107). The developmental stagnation of Africa is thus considered along the line of western legal systems and private property ownership, which promote corruption without an effective measure to curb it (Home, 2018, p. 170). The paper as such investigates if recourse to indigenous legal tradition is capable of bringing Africa back to a path of growth and development.

1. Indigenous legal tradition

The indigenous legal tradition in communities now known as Africa was woven around the land, which provide the material needs of life, believing that the soil feed man from infancy to adulthood and at death, provides housing for his corpse (Idowu, 1962, p. 163; Shyllon, 1998, p. 107). The indigenous peoples have laws governing land use, and the interrelations between all living beings. Aboriginal laws, cultures and knowledge systems recognize the relational connection of man to land (Watson, 2018, p. 119; Gunn, 2007, p. 68). The law is encoded right into the language, and stories are told in local languages and cultural practices manifest is discussions made in indigenous languages (Clammer, 2018, p. 3; Mainville, 2010, p. 2; Fletcher, 2006; Friedland, 2012, p. 10).

Article 1 of the Universal Declaration of Human Rights, 1948 emphasizes on the value of brotherhood in the indigenous community thus:[2]

> *All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*

[2] Universal Declaration of Human Rights GA Res 217A (III), UN Doc A/810 71 (1948).

The “Indigenous Peoples” in Africa share four peculiarities such as a specific parcel of land; having cultural distinctiveness; with self - identification and recognition by non-indigenes and finally, a common external aggression (Jegede, 2015, p. 802). The “Indigenous Peoples” lived in communities, and they are the people and nations who opt for a continuity of pre-colonial culture, with a view of preserving the ethnic identity, cultural patterns, social institutions and legal system, which is threatened by western culture (UN on Protection of Minorities). Watson (2018) and Olayinka (2020b) as such write: “The United Nations as such defines “Indigenous Peoples” as the indigenous communities, peoples and nations, who seek a historical continuity with the pre-colonial societies. They consider themselves distinct from the prevailing generation on those territories, in which they are the non-dominant sectors of the society now. They are nonetheless desirous of keeping the indigenous values. They seek to sustain the indigenous cultural patterns, social institutions and legal system.” By way of emphasis however, the indigenous people admire the cultural past and are desirous of carrying on with it, bonded in brotherly love, with their distinct ethnic identity and a cultural pattern in a legal system, which relate directly to the land.

The African traditional setting recognizes the “tribe” as the largest group of people claiming descent from a common ancestor, being of the same ethnic stock, same language and doing things in common. The strong bond in communities in Africa was found in the act of cooperation, interdependence, and collective responsibility, all for the good of the entire community (Mainville, 2010, p. 3; Cobbah, 1987, p. 309; Oyugi, 2018, p. 294). Aboriginal laws, cultures and knowledge systems flew from peoples’ relationships to land, which dictated their obligations to care for the community as one would care for oneself (Watson, 2015, p. 119; Mainville, 2010, p. 4). The communities were developing because an individual could only pursue such community interests and such personal interests that aligned with the community’s goals and the collective aspirations.

The nature and perception of land give a clear picture of what a people is, the culture, beliefs and ways of life which the people manifest (Udombana, 2003, p. 772; Oyugi, 2018, p. 294; Rodney, 1972, p. 358). Africa has cultural commonalities built around land ownership, which is tied to religious scheme and ancestral worship, leaving land as the most valuable of all material possessions sanctified in religion. The land meets the physical, mental and the spiritual needs of man, such that there is communion with the ancestral spirits through the land, for man’s sustenance. Watson (2018), Madhav (2020) and Olayinka (2020b) as such submit that “The physical and spiritual link with the natural environment were sustained through indigenous cultures and values which were captured in native languages, names, songs and stories and generally in oral tradition.”

Sacred natural sites, burial sites of the ancestors and traditional rulers, shrines and settlements of the African Traditional Religion are observed all over Africa, and consultations are held in those places with the spirits, from time to time (Madhav, 2020, p. 2; Olayinka, 2020b, p. 4). The ancestral spirits exist in relation to land just as land is perceived as the physical land and everything attaching thereto. There are sacred rivers, mountains, trees and forests that have been accorded “juristic personhood” as they accord rights, protections, privileges, responsibilities and liabilities to indigenous peoples of Africa.

These spirits are worshipped as they confer on their subjects, healing, provision, guidance, enforcement of rights and sanction for misconduct. Land is thus the spiritual link of the ancestral past, with the present, projecting cultural value transition, from the present, to the next generation, which is regarded as cultural sustainability. Indigenous, aboriginal or customary laws grew out of the local custom and practices of the people which have by long usage become compulsory and which have acquired the force of law. It is a mirror of acceptable

usage, with flexibility feature, which changes with time (Olayinka, 2008, p. 28; Fabamise & Aina, 2019, p. 62).

Each community has its own peculiar customary law, which is distinct from others, and it is as old as mankind, within a particular geographical location. Cultural policies are rooted in the local soils for sustenance, just as a traditional ruler has to reign in a specific geographical location so as to be relevant and effective (Clammer, 2018, p. 8, 9). Indigenous legal tradition and its relation with human rights as such has to do with what a people is, a people's culture, certain ways of doing things as captured in the mind, body and spirit of the people.

1.1. African communal land ownership

Land is the basic resource upon which any physical act of development, such as farming and other occupational ventures take place. The land provides food, water, air, shelter and general sustenance for man (Home, 2018, p. 163; Olayinka, 2020b, p. 4). The pre-colonial Africa had a wholesome communal ownership of land, which was built on the general guiding principle of groupness, sameness, co-operation, interdependence, commonality and collective responsibility (Hinz, 2008, p. 74; Mekonnen, 2010; Cobbah, 1987, p. 309; Oyugi, 2018, p. 294). Land as such was inalienable property on account of the social relations, spiritual connotations on the land, which worked for the development of the entire community (Rodney, 1972, p. 57; Mekonnen, 2010). Indigenous Peoples of Africa as such recognised each other's contribution to the community's wellbeing and development.

The community members held land as collective belonging and acted towards each other in a just and equitable manner, based on brotherly love and family ties, under the concept of ubuntu (Rodney, 1972, p. 58; Cornell & van Marle, 2005, p. 220; Mekonnen, 2010, p. 106). Flowing from the ubuntu concept is the consensus of certain indigenes that were called to compete on the principle of "a winner takes all." The contestants rather resolved to compromise the principles of competition as they held hands and strolled to the set target, thus, winning together. They opted to be joint winners in brotherly love, savouring victory together, in happiness and fulfilment, rather than for a single winner being good alone. The attitude of the contestants alludes to communalism in the African which detests private property ownership and capitalism.

Properties were held at the family or at community levels; the traditional ruler held the parcel of land on behalf of the community as a trustee. At the family level, property could not be transferred without the concurrence of both the head of the family and the principal members of the family, by way of checks and balances in the handling of the same. It was as such absurd for anyone to contemplate having a sale of a piece of land which was regarded as the link between the living, the ancestors and the future generation (Shyllon, 1998, p. 104). Land in Africa, being the abode of sacred objects, ancestral altars, shrines and other cultural properties were thus, not for sale, except by he, who the gods would punish.

1.2. Partitioning, colonialism and the right to self-determination

States such as Germany, hosting Austria-Hungary, Belgium, Denmark, France, Great Britain, Italy, the Netherlands, Portugal, Russia, Spain, Sweden-Norway, Turkey, and the United States of America held the Berlin Conference in 1884. The Conference had the agenda of scramble, conquest and partition of Africa (Home, 2018, p. 162). France, Germany, Great Britain, and Portugal were the major beneficiaries of the partitioning and allotment of the African communities and this was signed and sealed in the Berlin Treaty of 1885 (Rosenberg, 2019; Olayinka, 2020b, p.3).

Communities in areas now known as Africa lost their primitive innocence by way of social, political and economic peculiarities to colonialism (Shai, 2019, p. 501). Colonial powers

desired the vast human and natural resources endowment in Africa; they got it through the process of colonialism, which was presented as a process towards ending slave trade. The colonial powers took over the control of community parcels of land on the strength of treaties signed with illiterate traditional rulers. On the strength of that, the later were deemed to have consented to relinquish ownership and control of their ancestral homes and thus, colonial administration was imposed (Ndlovu-Gatsheni, 2015, p. 27; Gunn, 2007, p. 33).

Each of the colonial powers agitated and got reasonable quantum of natural resources within its colony and that informed the pattern of geographical division of communities in Africa. This explains the separation of certain community members sharing community ties, and the assemblage of people without any existing family and communal ties, which fact destroys the cohesiveness desired to sustain communities and their values in Africa. The consequent cultural diversity reflects the loss of identity and this hinders the attainment of sustainable development in Africa. Berlin Conference is described as a single meeting with devastating political, socio-economic, and cultural consequences for Africa (Ndlovu--Gatsheni, 2015, p. 28), owing to the lack of care for the cultural blend of the people within the new geographical expression. The European partitioning of Africa created deep political and social divisions in the countries of Africa and the thoughts of united communities were no longer sustainable (Home, 2018, p. 162).

Henceforth, indigenous people lost sustainable control of their ancestral homes. This social-political and economic intrusion was done in an open disregard and disdain for the African people's dignity, right to indigenous legal system and self-determination (Ndlovu-Gatsheni, 2015, p. 26). The treaties were obtained fraudulently without having a genuine consent of illiterate traditional rulers, on the basis of a written contract couched in foreign languages, which afforded them no interpreter. The foundation of the colonial Africa was as such laid and sealed in deceit, misrepresentation and fraud. Consequently, in the 19th Century, Africa, with the exception of Liberia and Ethiopia came under the control of the imperial powers (Rodney, 1972, p. 215; Ndlovu-Gatsheni, 2015, p. 27). Colonial powers had their flags in different parts of Africa and imposed political domination on the Continent (Rodney, 1972, p. 214).

The right of the Indigenous peoples to self-determination links with the peoples' sovereign status prior to colonialism. Colonialism and the introduction of western laws on private property hindered the full realization of the right of the people to self-determination, right to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

The Universal Declaration of the Rights of the People, put together in a Conference in Algeria in 1976 provides that everyone is entitled to a cultural identity, the right of minority to respect for identity, traditions, language and cultural heritage, the right of a people not to have an alien culture imposed on it.[3] The partition and colonization of Africa in an open disregard and disdain for the African people's dignity, rights and freedoms have negative impact on African societies, in terms of the political, economic, cultural, and psychological matters (Ndlovu-Gatsheni, 2015, p. 26, 27; Home, 2018, p. 162, 163). The right to development may as such be attained where the right to self-determination and full sovereignty over land, natural wealth and resources is enforced (Saah, 2018, p. 17).

Colonialism adversely affected the indigenous people's ability to protect their lands as well as the age old obligation of care for one's country (Watson, 2015; Watson, 2018, p. 119; Gunn, 2007, p. 33). Colonialism blocked the further evolution of national solidarity (Rodney, 1972, p. 225), such that indigenous political leaders now pursue personal interests as against

[3] Universal Declaration of Human Rights GA Res 217A (III), UN Doc A/810 71 (1948); Universal Declaration of the Rights of Peoples' Conference, Algeria, 1976.

communal interests. This development is attributed to the break of the primitive innocence of the indigenous people of Africa, from the time of slave trading to industrialisation, down to imperialism and colonialism (Ndlovu-Gatsheni, 2015, p. 24, 25).

As Africa suffers on its side of the world, Shyllon observes that the former imperial powers, as members of the United Nations play the game of pretence, with the Charter's Equal Rights and Self-determination provisions (Shyllon, 1998, p. 114). This position is reinforced by the colonial bond between the colonial powers and their colonies to pursue policies at the expense of the development of the independent African Countries (Jabbar, 2018; Saah, 2018, p. 14). As such, it needs to be argued that there are no foreign conspiracy and connivance in the underdevelopment of Africa, particularly where looted funds from public treasuries in Africa have safe custody outside the Continent.

Aboriginal laws and the relational obligation to care for one's country continue to apply subject to the provisions of the colonial legal systems (Gunn, 2007, p. 68; Hinz, 2008, p. 67, 68; Watson, 2018, p. 120). Consequently, the indigenous people were stripped of the recognized authority to govern their land. Colonialism was propagated as a process of stopping slavery of the "able bodied men" in Africa. Imperial powers under colonialism however advanced the course of slavery, just as "the able" and "the disable" and of course, the entire communities in Africa are presently under modern slavery of different dimensions.

1.3. Legal pluralism and conflict of laws

The Berlin Conference on partitioning of Africa broadened the boundaries of communities and villages in the Continent and introduced new settlers to existing communities, such that cultural diversities set in. Such cultural diversity within states introduce variety in legal norms, captured within various legal systems, in such a way that a single community now has different set of laws applying to it (Ndlovu-Gatsheni, 2015, p. 28; Hinz, 2008, p. 67). Equally, there is ethnic pluralism such that nation states which existed as independent political entities before the partitioning of Africa now co-exist with some other communities. Religious pluralism exists as the African Traditional Religion, itself having variety of denominations coexisting with the Islamic Religion and the Christian Religion, all having different influences on the lives of indigenous Africans.

The concept of legal pluralism recognizes systems of law such as the Customary Law, Islamic Law and English law. The Customary Law is otherwise known as the tribal, indigenous, aboriginal, and native, which co-exist with the Common Law of England (Griffiths, 1986, p. 6; Oba, 2002, p. 817; Durojaye et al, 2018, p. 57). The multiplicity, unwritten, diverse variations of customary law are of the greatest challenge in the codification of customary law in Africa (Sanni, 2006, p. 252; Fabamise & Aina, 2019, p. 62). For instance, English Law forms the basis and the yard stick with which the Nigerian Legal System is measured; this has completely given a false African value system (Ayinla, 2019, p. 20). Thus, the Common Law promoted western value system, such that manifests in the private property ownership which has not been helpful in Africa. The states comprising African Union now practice legal system that replay their colonial experiences and this is only complemented by indigenous or customary laws (Home, 2018, p. 166; Griffiths, 1986, p. 6).

The Indigenous legal system applied to administration of land in rural communities, just as western laws regulated land situate in urban centres in Africa (Home, 2018, p. 166; Watson, 2018, p. 137; Mainville, 2010, p. 3; Gunn, 2007, p. 33). The observed cultural diversity within the colonial states led to legal plurality, and in the event of conflict between indigenous laws and the Common Law, such was resolved in favour of colonial laws, and this militated against the tradition and norms of the indigenous communities (Hinz, 2008, p. 67, 68; Ndlovu-Gatsheni, 2015, p. 26). Consequently, the aboriginal laws, which hitherto regulated relational

obligation to care for one's community and nation, became subsumed to the colonial legal system. The colonial interests in Africa, from the 15th Century onwards has devastating effects as the Continent lost the opportunity to draw an agenda for its development (Ndlovu-Gatsheni, 2015, p. 17). The indigenous cultural chain was broken and the care of the community and nation was substituted with the private property ownership drive (Watson, 2018, p. 120; Gunn, 2007, p. 68). The recognition of cultural diversity and the adoption of institutional measures result in plurality which militated against cultural sustainability and ditto, development of Countries of Africa.

3. Private property, judicial system and corruption

3.1. Culture and sustainable development

Culture covers a system of norms and values of a particular community which it manifests and professes, which tradition it has followed for ages as it influences its ways, behaviour and relationships. Culture manifests in languages with the values and the strength of such, greatly captured therein (Clammer, 2018, p. 3; Fletcher, 2006; Friedland, 2012, p. 10). In Africa, particularly, as culture and customary law are unwritten, culture is preserved from generation to generation through oral tradition, tales, taboos, storytelling and songs (Friedland, 2012, p. 8, 9; Borrows, 2010, p. 139, 179). Customary law grows out of the local custom and practices of the people which have by long usage become essential, and which have acquired the force of law. It is a mirror of acceptable usage, with flexibility feature which changes with time (Olayinka, 2008, p. 28; Fabamise & Aina, 2019, p. 62).

The African Charter on Human and Peoples' Rights[4] allows every individual to freely take part in the cultural life of his community. The right to culture is the right to identify one's own culture, to maintain and develop the same as it contributes to the "delivery" of development goods (Clammer, 2018, p. 3; Ferric, 2018, p. 4). It is the duty of the state to protect morals, culture and traditional values of the community, which in turn drives a nation's development.[5] Cultural rights provisions are foundational provisions as they guide a state on how to make its cultural policies and to take some "other measures," such as administrative, financial, educational and social measures, towards the enforcement (Olayinka, 2019b, p. 39). Constitutionalisation of the cultural rights in turn aids in the smooth enforcement of the rights (Orago, 2013, p. 178; Olayinka, 2019a, p. 569), while the doctrine prescribes the authorised scope of a government's authority as determined by a body of laws or constitution (Bellamy).

In the International Covenant on Civil and Political Rights (ICCPR),[6] the only reference to cultural rights is made in Article 27 and with the International Covenant on Economic, Social and Cultural Rights (ICESCR);[7] cultural rights are secured by Article 15 which provides for the right to take part in cultural life (Ferri, 2018, p. 3).

Culture is a way of life, attitude of a people which are capable of transforming underdevelopment into development of human capital, critical infrastructures, regional competitiveness, environmental sustainability, social inclusion, health safety, literacy and other initiatives (Saah, 2018, p. 15). Development is not as such feasible at a globalised level, because cultural values and yardsticks which are peculiar to a specific geographical divide is the driver of development. Development which is conceived outside cultural considerations is baseless, unsupportive and unsustainable, particularly in the face of globalisation, civilization and coloniality. Thus, to Clammer, it is worthwhile to adequately triangulate culture, development

[4] Article 17 (2) of the African Charter on Human and Peoples' Rights

[5] Article 17 (3) African Charter on Human and Peoples' Rights; Adeola, 2017, 38.

[6] International Covenant on Civil and Political Rights GA Res 2200A (XXI), 21 UN GAOR Supp (No 16) 52, UN Doc A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967).

[7] International Covenant on Economic, Social and Cultural Rights GA Res 2200A (XXI), 21 UN GAOR Supp (No 16) at 49, UN Doc A/6316 (1966); 993 UNTS 3; ILM 368 (1967).

and sustainability (Scott 1998; Clammer, 2018, p. 9), because there is no serious development without sustainability. In the circumstances, sustainability is the development of the present generation, by exploring the gains from the past generation, without mortgaging the future of coming generation.

3.2 Un-equal access to justice and development

The position of equality among indigenous people under the pre-colonial Africa was informed by the land holding and the systemic open approach to land use (Rodney, 1972, p. 57; Gunn, 2007, p. 69). In the pre-colonial Africa, land was the major means of production, and it was owned by groups such as the family or clan, the head of which was responsible for the administration of the land on behalf of every living indigene, the dead and those yet unborn. Land is a factor of production which is possessed and cherished, to preserve the fond memories of the dead, and responsibly explored by the living, in a manner not prejudicial to the future generation.

Land as such determines Africans' social, economic, political and spiritual being (Cornell & van Marle, 2005, p. 220; Mekonnen, 2010, p. 106; Home, 2018, p. 162). To the indigenous peoples of Africa, the land belonged to the community, a man who applied to cultivate land was not disturbed in his farming activities, provided he confirmed on annual basis, the community ownership of the land. This he did by ceding a percentage of his annual harvest to the community, represented by the traditional ruler (Webster, 2012, p. 633; Oyugi, 2018, p. 281).

The African traditional ruler was regarded as the symbol of the residuary, reversionary and ultimate ownership of all land, held by the community. He held on behalf of the whole community, in the capacity of a trustee. Colonial administration broke the communal bond as it introduced private ownership of land and incidentally, in-equality in property relations among the indigenes (Hinz, 2008, p. 75). Western perception of development is that which places the individual interest above that of the community or state (Webster, 2012, p. 633; Oyugi, 2018, p. 281) which does not work for Africa.

The introduction of private ownership of land broke communal bond and in turn introduced in-equality in property relations among the indigenous peoples of Africa (Hinz, 2008, p. 75). The indigenous peoples were as such dispossessed of their lands through this imposition of individualized title, with an effect of loss of the cultural ways of relating with one another, the brotherly love and the indigenous views about land (Gunn, 2007, p. 32). Ferguson argues that the property rights conceived and bequeathed to Africa by colonial powers were "killer apps" (Home, 2018, p. 170). Taking for instance, Article 40, Constitution of Ethiopia provides in paragraph 3 thus: "The right to ownership of rural and urban land, as well as of all-natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange."

There is an abrupt departure as paragraph 6 provides for the right of private investors to access land based on payment arrangements allowed by law. Consequently every Ethiopian enjoys right to the immovable property, he may build permanent structure on land and may alienate, bequeath or generally dispose of the same as provided by law.[8] Section 43 of the Nigerian Constitution provides more clearly on the right of every Nigerian to acquire and own land which it regards as immovable property, anywhere in the Country.[9] Notwithstanding that private property holding violates the beneficial communal property right, the African Charter and the constitution of post-independent African states as such guarantee private property

[8] Article 40(6)(3)(1) Constitution of Ethiopia, 1995.
[9] Section 43, Constitution of the Federal Republic of Nigeria, 1999.

rights.[10] To attain development, however, there has to be a culture of equality among members of a community (Clammer, 2018, p. 3, 4).

Human rights violation and the absence of effective redress mechanism results in conflict, social unrest and instability, which do undermine socio-economic and cultural developments (Durojaye et al, 2018, p. 49). The state of justice administration has much impact on development of a state. Article 10 of the United Nation's Universal Declaration of Human Rights (Universal Declaration) recognizes the right of everyone to a fair and public hearing by an independent and impartial tribunal.[11] The right to fair trial and access to justice are attained under a level of equality, before an independent, just and fair trial proceeding (Art 37(1), Ethiopia, 1995; Mohammed, 2017, p. 54; Olayinka, 2019c, p. 137). It also entails the availability of trial proceedings which is affordable, timely, effective and accessible (Metiku, 2015; Mohammed, 2017, p. 54; Durojaye et al, 2018, p. 51; Olayinka, 2020a, p. 5).

Equality before the law and the right to obtain effective remedy upon violation of fundamental rights and freedom are recognised under Article 7 and 8 of UDHR as well as under article 14 of ICCPR (Metiku, 2015; Mohammed, 2017, p. 54). The formal justice system inherited from the imperial powers generally fall short of expectation as it is not user – friendly, being very technical, causing undue delay, costly and with the consequent effect of denied access to justice.

Under colonisation, there was the imposition of Western law on indigenous people, including Private Property Law. The colonial administration expropriated a large parcel of free-hold land, which they opened to individual purchase, mortgage and this incident cut across Africa, particularly Namibia, South Africa, and also Angola (Gunn, 2007, p. 68; Hinz, 2008, p. 75). Going by the private property ownership is the delimitation of parcels of land which gives identification and this leads to registration of the same. These processes make such parcel of land fit for property valuation desired to raise loan or for an outright sale (Home, 2018, p. 172).

Private Property Law was introduced as a product of the Common Law and it applied in countries of Africa, such that there is now common law and customary law regulating simultaneously, interests in land (Gunn, 2007, p. 33). The dual mandate policy of the imperial powers recognized the town creation which are deemed to be owned by the state, fit for demarcation, leasing or outright sale, while the customary communal land tenure was preserved under the indirect rule (Home, 2018, p. 166). Not less than 75 per cent of land tenure systems in most African countries are however governed by customary laws (Durojaye et al, 2018, p. 57).

3.3. Participation towards development

Land was the major means of production, and it was owned by groups such as the family or clan, the head of which was responsible for the administration (Rodney, 1972, p. 57). The prominent business activity was agriculture, with an individual engaging in farming, fishing and animal husbandry, simultaneously, without any specialization and majorly at a subsistence level (Rodney, 1972, p. 68). The aboriginal laws, cultures and knowledge systems recognize the relational connection of man to land which expectedly provides sustenance for the man, as he feeds and lives from his infancy to adulthood (Idowu, 1962, p. 163; Shyllon, 1998, p. 107).

[10] Article 14 of the African Charter on Human and Peoples' Rights; Article 17(1) of the Universal Declaration of Human Rights, 10 December 1948; Section 20(1) The Constitution of The Republic of Ghana (Amendment) Act, 1996; Section 25(1) Constitution of the Republic of South Africa, 1996.

[11] Universal Declaration of Human Rights, 1948; Article 7, African Charter on Human and Peoples Rights, 1981; Section 36 of the Constitution of Federal Republic of Nigeria, 1999.

A member of the community's access to land measured his level of participation in the pre-colonial Africa. A man had a right to communal land, which he requested and used in a manner which identified with the goals of the community (Webster, 2012, p. 633; Oyugi, 2018, p. 281). The active participation of traditional rulers in the management and allocation of land was unquantifiable. The indigenous legal system allowed equality among community members, and is thus the right environment to achieve development in Africa.[12]. It is believed that the system of equality, which allowed everyone to contribute his quota to production processes, is capable of giving a direction into the national and international development policies (Udombana, 2003, p. 485; Clammer, 2018, p. 6).

The call to participate affords indigenous peoples the opportunity to contribute to cultural development debates, by protecting and preserving the moral, cultural and traditional values of indigenous peoples (Clavero, 2005, p. 97; Njieassam & Mbao, 2018, p. 152). Full participation of man in the production chain is feasible where a state exercises its full sovereignty over natural wealth and resources (Saah, 2018, p. 17) and such control is not hijacked for personal gains.

The colonial states extinguished equality with the introduction of private property, which hinders equal access of most people to land and factors of production, and thus widening the gap between the rich and the poor (Goal 16(3) of the SDG; Watson, 2018, p. 119). With the public sector corruption, the diversion and siphoning of public funds affects the economic empowerment which the poor people in the communities need to be able to participate actively in the social, economic and political governance (Munyai & Agbor, 2018, p. 72, 76, 86). This development is at variance with the right of every person to participate in the production cycle.[13] The right to development is achievable under a philosophy which gives priority attention to the people's involvement and participation (Wang & Tang, 2015, p. 570; Webster 2012, p. 633; Oyugi, 2018, p. 281, 285). The exclusion of indigenous peoples from participation in respect of civil, political, economic, social and cultural rights affects their right to development (Njieassam & Mbao, 2018, p. 151). The indigenous peoples that have limited access to land are the unemployed, the less educated, the physically challenged and they equally lack other human rights, basic social services, and the right to development.

The Sustainable Development are however realizable based on the equal access to factors of production.[14] The SDG and global visioning require that the consent and active involvement of indigenous people must be sought and obtained on matters which affect them. Development programmes which do not meet the set standards are invalidated as illegal. Sustainable development is as such attained by the promotion of the rule of law, and equal access of everyone to justice (Goal 16, SDG; Sultany, 2012, p. 381, 382; Ferejohn & Pasquino, 2011, p. 353, 354; Cox, 2004, p. 751, 764).

The traditional legal system recognizes natural spiritual entities such as rivers, mountains, sacred trees and forests that are worshipped for their supervisory role on the processes of development of humanity (Studley, 2020, p. 1). Participation and involvement of every citizen bridges communication gap, which hitherto led to conflict between the government and the indigenous peoples and which hinder development.

3.4 Corruption and in-equality

Corruption is defined by the African Union Convention on Preventing and Combating Corruption (AUCPCC) as the act and practices including related offences proscribed by the Convention, while the Preamble acknowledges that corruption undermines accountability and

[12] Goal 10, SDG 2015.
[13] Articles 13, 22 of the African Charter on Human and Peoples' Rights 1981.
[14] Goal 16(3) of the SDG.

transparency in the management of public affairs as well as socio-economic development of the Continent.[15] Corruption is thus a product of moral decay, wicked behaviour, putridity or rottenness which hinder proper service delivery, to which people are legitimately entitled (Gebeye, 2015, p.77; Munyai & Agbor, 2018, p. 78). The impact of corruption is felt where there is a compromise on the approved standards of doing things, so as to have personal gains (Obura, 2014, p. 126; Olayinka, 2019b, p. 42). The colonial administration in Africa introduced private property ownership. The peoples' bid to acquire the same explains the corruption which takes place in the private and in the public sectors of applicable countries. Corruption is thus a dysfunction, which is traced to the loss of cultural values entrenched in the communal ownership of land in Africa.

Corruption militates against efficient resource planning and allocation, and results in high institutional expenditures as a result of inflation of contract costs leading to the loss of social and economic development (Munyai & Agbor, 2018, p. 86; Olayinka, 2019b, p. 43) as such submits, "the state's resources are dissipated under the guise of "white elephant projects" and infrastructural schemes that are of low quality. The crime is broad-based, it distorts the functioning of the central government, and it erodes public confidence in good governance, the rule of law and economic stability." Corruption has devastating effects on development as the elected or appointed officials no longer give an account of their stewardship. The absence of transparency widens the gap between the poor and the rich and the inequality hinder development in Africa (Munyai & Agbor, 2018, p. 86).

Corruption starves affected communities or nations of the desired social and economic development and this violates the provisions of Article 2(4) of the African Union Convention of Preventing and Combating Corruption on the promotion of socio-economic development.[16] Corruption is thus an obstacle to the enjoyment of economic, social and cultural rights, as well as of civil and political rights in Africa and this has to stop or reduced to the barest minimum (Olayinka, 2019b, p. 52).

Hitherto, there was the primitive innocence of the African, land and other valuables were held in common and it was a taboo for anyone to mishandle resources of the community. That position aligns with a Yoruba adage that *ole to ji kakaki i Oba, ibo ni yoo ti fon o,* which translates to: "*he who steals the trumpet which is held by the traditional ruler in trust for the community, where is he going to blow it"?* The saying manifests the primitive innocence of the Indigenous African which Lord T.B. Macaulay confirms to the effect that he had been across the length and breadth of Africa and he did not see one person who was a beggar, who was a thief, and that the indigenous peoples of Africa had high moral values (Mehmood, 2018; Babalola, 2020). The sterling virtues of Africans, operating in the right environment towards development is well captured in hard work, ploughing the very - rich - ancestral vegetation with humility, integrity, and for the benefit of all, was confirmed by Macaulay in 1835.

Lord Macaulay recommended to the British Parliament that to bring Africa under control, the Continent's spiritual and cultural values and the indigenous education system had to be substituted (Mehmood, 2018; Babalola, 2020). Thus, communal bonding eventually gave way, as conditions of inequitable access to factors of production were introduced, for a few to acquire in private capacity, that which belonged to everyone in a community. Properties are now acquired on private basis on the principles of "a winner takes all," "survival of the fittest," and "the end justifies the means." The "we" syndrome has now given way to the "I." The political office holders are no longer comfortable with having resources collectively with their

[15] African Union Convention on Preventing and Combating Corruption AUCPCC Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, 11 July 2003.
[16] Ibid.

constituents. Privatization of public utilities is done in less transparent and fraudulent ways; absence of accountability as such makes possible the conversion of the public utilities to private properties (Munyai & Agbor, 2018, p. 76).

Following the loss of cultural identity of Africa, public sector corruption becomes a culture as communities turn to celebrate riches, regardless of the source. Public sector corruption occurs in public offices and public enterprises, and it manifests in different circumstances. With the breakdown of the original *Ubuntu* bond on account of colonialism, there is now adulterated societal value put in place. As such, corrupt political leaders dwell on religious, civil, and ethnic issues to cover up, on their corrupt deeds in office (Mutua, 2016, p. 161). The communal bond is broken, political dealership is now the substitute of selfless leadership, where a political dealer is he, who enriches and feathers his own nest, as he purports to provide the needs of his constituents. The west - conceived private property ownership as it applies to the African culture makes a destructive virus. This has infected the African *Ubuntu* spirit, such that no "legal vaccine" from the independent countries of Africa has been effective towards taming the endemic ailment called corruption.

4. Challenges and recommendations on cultural rebirth

4.1. Development with local focus

The United Nations through the Sustainable Development Goals envisage having development on a global level.[17] Indigenous culture is the vehicle towards development, and every culture is rooted in a locality, it is not feasible as such to contemplate having development from a global perspective. At best, global visioning towards development serves as persuasive guide for a state to embrace, at its own convenience. Development is local and can be realized in the circumstances within a peculiar-geographical-divide, with a common culture, as no nation ever developed using a foreign culture as its drive. The indigenous African and the present generation have been influenced into believing in the superiority of foreign culture which in turn makes Africa subservient, for ever (Mehmood, 2018; Babalola, 2020). The foreign religions and the adopted legal system, education and foreign languages were imposed as instruments for the control and domination of Africa. The education system bequeathed to Africa is meant to discourage African innovation, enterprise and development.

This position is sustained by a very strong condemnation of indigenous languages in the schools and in the home front. This writer has been aware of the "do not speak vernacular" policy since his primary school days, and was punished by his indigenous teachers for flouting the regulation a couple of times. Given the fact that the African Culture is packaged under oral tradition, it remains disastrous as the foreign education condemns the speaking of indigenous languages in homes and schools. This development makes the African traditional languages, culture and development unsustainable.

If there is logic in the Portuguese, German, French and English languages being cherished in the home countries, African languages should be allowed to thrive, all subjects in the primary and secondary schools should be taught in the first language of African students. Since indigenous culture is the vehicle towards development, Countries of Africa have to embark on serious cultural sensitization using the press and the formal education platforms. There is the need to engage a restructured primary and secondary schools, in the resuscitation of the old communal values, brotherly love and good name.

4.2. Societal value

Everyone in the traditional communities was obliged to protect the good family name, even the good reputation of the entire community. Indigenous songs emphasised on this value

[17] Goal 10 of SDG.

and no amount of riches that a person had could bail him out from the odium and ostracization in the community for misconduct. Nowadays, a public official is arraigned on allegation of corruption and his political party, his ethnic group and some other interest groups stand in solidarity to defend such wrong, and thus, corrupt practices are encouraged. The corrupt public official holds enough funds and is buoyant to pay the piper and to compel the tune. Most of the clerics and tele-evangelists and religious bodies that hitherto guided their congregations on the path of uprightness, integrity and service to humanity rather preach on prosperity as they also want to live big like their corrupt political friends.

4.3. Traditional justice system

Sustainable development is attained by the promotion of the rule of law, and equal access of everyone to justice. The indigenous legal system allowed equality among community members, and is thus the right environment to achieve sustainable development in Africa (Kariuki, 2014, p. 202; Olayinka, 2017, p. 64; Durojaye et al, 2018, p. 56; Goal 10 of SDG). Reference is however made to the colonial states which substituted the efficacious indigenous justice institution in terms of cost, time and general effectiveness towards obtaining remedies (Article 7 and 8 of UDHR; Mekonnen, 2010, p. 109; Mohammed, 2017, p. 55), with the western legal systems. The formal legal systems turn out, being unfit for purpose, especially as they are technical, slow and costly and generally hinder access to justice (Ellmann, 2004, p. 321; Durojaye et al, 2018, p. 50; Olayinka, 2020a, p. 5).

Governments in countries of Africa make policies and legislation and establish institutions at the national and at the regional levels (Olayinka, 2019a, p. 565) to prevent corruption, which is the offshoot of private property holding, but the efforts, are not fruitful. The failure of such initiatives is the discord they have with indigenous cultures. Hitherto, it was a taboo under the traditional legal system for anyone to steal the trumpet belonging to the community; under the adopted western legal systems, the community's trumpet under the custody of the traditional ruler is not only stolen, but the traditional ruler and members of his household are either killed, or kidnapped for payment of ransom.

The western legal systems which are applied distinct from the African culture have the record of delivering judgments without justice, judgments that sow the seed of discord among brothers and family members (Durojaye et al, 2018, p. 50). The Yorubas as such remark in their adage that; A *ki ti kootu de, ka tun sore*, which establishes that you do not come back from court proceedings and still maintain cordial relationship. In the circumstances, the western legal systems do not complement the development drive of countries of Africa.

The traditional justice system has certain salient features, which promotes flexibility, which makes it possible to save time, to save cost, and for easy access particularly for the marginalized groups in indigenous communities in Africa.[18] The indigenous legal system as such promotes equality among the indigenes, which step is desired for sustainable development. It particularly promotes restorative justice, which makes it a more viable option to the formal justice system (Kariuki, 2014, p. 202; Durojaye et al, 2018, p. 56). In practical terms, the closeness of man to nature, the land and soil are recognized as witnesses in respect of covenants made by people, believing that judgment belongs to the earth, upon which a people have covenants (Idowu, 1962, p. 163; Shyllon, 1998, p. 107). The spirits attaching to the land can be commissioned to punish culprits in the circumstances of acts of sharp practices of one against the other, or for any untoward disposition to the community. In which case, good care for the community and national solidarity can be enforced easily (Rodney, 1972, p. 225; Gunn, 2007, p. 33; Watson, 2015; Watson, 2018, p. 119) when political office holders are made

[18] Article 7 and 8 of Universal Declaration of Human Rights, 1948; Mekonnen, 109; Mohammed, 2017, 55.

to take oath of office, swearing by the land or by the gods. Application of the virtues prescribed by the African Traditional Religion is the effective check to public sector corruption.

Conclusions

Imperial powers' romance with Africa for upwards five centuries successfully blurs Africa's history and disturbs the projections of the Continent into its future. Africa expects to develop, feigning ignorance of the fact that a continent cannot develop on the strength of a foreign culture and or just being weighed down by colonial bond and coloniality and foreign countries' complicity in fund looting in Africa (Jabbar, 2018; Saah, 2018, p. 14). This position is attributed to the crop of political leadership that betray the trust reposed in them without any consequences. Hitherto, communities in Africa were thriving as they observed their cultural values manifesting in the communal ownership of land in which there was equality, brotherly love and family ties that were essential conditions for their development (Rodney 1972, p. 58; Cornell & van Marle, 2005, p. 220; Mekonnen, 2010, p. 106).

The partitioning of Africa brought new settlers to existing communities such that cultural values become questionable. The communal ownership of property, culture, hard work, moral value and integrity in Africa got sold for the foreign-conceived, "killer-app" personal property ownership (Home, 2018, p. 170). Africa is neck deep in the ditch of foreign culture, adopted legal systems, education, foreign religions, foreign languages, all packaged in gold and sold to the African. Enlightenment towards cultural rebirth has to be embraced and the youths of today should be made to cherish the beauty in local initiatives. The indigenous legal system should be invoked so that equality, brotherly love and national solidarity can be pursued.

Abbreviation:

AU:	African Union
ICCPR:	International Covenant on Civil and Political Rights
ICESCR:	International Covenant on Economic, Social and Cultural Rights
SDG:	Sustainable Development Goals
UDHR:	Universal Declaration of Human Right
UN:	United Nations

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