

The Concept of Equality under the Indigenous and Western Legal Systems: Issues and Challenges on Sustainable Development of Africa

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Abstract

Communities in Africa in the pre-colonial days lived with one another in a just and equitable manner, in love, on the principles of *ubuntu*. The way of life was further sustained by the communities' perception and equation of the land with humanity, where everyone had equal access to the land as factor of production. The communal system which assured of equal treatment of everyone suffered a set-back, through centuries of slave trading and the colonization and the eventual imposition of western laws on indigenous peoples of Africa, these transformed the indigenous communities from their classlessness into stratified un-equal societies of those who have and those who do not have. Corruption evolves as a result of private property ownership and this further compounds in-equality, such that communal properties are unfairly taken over by few individuals, under non-transparent privatisation of public utilities. Access to factors of production and to justice in the post-colonial Africa is a myth on account of technicality and cost. The prospect of sustaining the pre-colonial equitable access to factors of production and to justice through oral tradition suffers a setback on account of the loss of cultural archives like the African traditional religion and the indigenous languages.

Keywords: equation of the land, un-equal societies, Corruption, public utilities, pre-colonial equitable.

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1. INTRODUCTION

Indigenous legal tradition manifests in cultural ways of doing things in a manner acceptable to the African Traditional Religion [¹], as captured within Indigenous African languages [²]. The indigenous legal

tradition was further strengthened on the communities' perception and equation of the land with humanity and existence, believing that the land sustains man from infancy to adulthood, such as it accommodates the corpse at death [³]. The combined operation of the African

¹ J Clammer, 'Cultural Rights, Sustainability and Development: Are They Related? If so, How?' (2018) 22 *Journal of Law, Social Justice & Global Development Issue 3*; M Fletcher, 'Rethinking Customary Law in Tribal Court Jurisprudence' (Occasional Paper delivered at Michigan State University College of Law, Indigenous Law and Policy Centre Occasional Paper Series, 2006) at 17, <<http://www.law.msu.edu/indigenous/papers/2006-04.pdf>> accessed 5 January 2021; H Friedland, 'Reflective Frameworks: Methods for Accessing,

Understanding and Applying Indigenous Laws' 11(1) *Indigenous Law Journal* 10.

² Kithaka wa Mberia, 'The Place of Indigenous Languages in African Development' (2015)2(5) *International Journal of Language and Linguistics* 57.

³E B Idowu, *Olodumare: God in Yoruba Belief* (London, Longman, 1962) 163; F Shyllon, 'The Right to a Cultural Past: African Viewpoints' in Halina Niec (ed.) *Cultural Rights and Wrongs, a Collection of Essays in Commemoration of the 50th Anniversary of the Universal*

Traditional Religion, indigenous languages and the principles on land gave the Africans the sense of history of communal living, communal ownership of land, co-operation, interdependence, collective responsibility and commonality [4].

Land was the main factor of production and it belonged to a community though under the administration of traditional rulers, such that everyone who applied for a parcel of land for agricultural purposes got it [5]. The community members related with each other in a just and equitable manner, in love on the principles of *Ubuntu* [6]. Everyone acted on equal pedestal as subsistent farmers which did not allow income inequality [7]. The challenges faced by the Communities in Africa on the prospects of sustaining its development, holding cultural value from the present, to the next generation is the five centuries of foreign incursion on the African primitive innocence. The period covered the centuries of slave trading and consequently the introduction of colonialism [8]. The imposition of western laws on indigenous peoples took Africa beyond its classless communities into those who have and those who do not have. The private ownership of land unveils in-equality in property relations among the indigenous peoples of Africa, as it creates a new class and in-equality [9]. Public sector corruption is a compromise on the

approved standards of doing things, so as to have personal as against collective gains; this crime is committed by people who are desperate to join the newly created propertied-class [10].

The paper considers the trend in countries of Africa, which embraced building of public utilities at independence until the 1980s, when privatization of public utilities was adopted, believing that the indigenous Africans would be better for it [11]. Consequently, the anticipated positive outcomes from privatization are not met as the people get increased tariffs and uncomplimentary treatment when paying bills. In the long run, the masses and the vulnerable lose the right to participate in the running of the economy as jobs and access to factors of production are lost to the political leadership and their cronies, through non-transparent privatization of public utilities [12]. In the post-colonial-stratified nations, issues which were initially overlooked out of love and brotherliness became magnified. The masses no longer have access to factors of production on account of circumstances of birth, parentage, sex, tribe, medical fitness, rural or urban location, access to education and others [13].

The unequal and preferential access to state resources and to factors of production results in under-

Declaration of Human Rights (UNESCO Publishing 1998) 107.

⁴Manfred O Hinz, 'Traditional Governance and African Customary Law: Comparative Observations from a Namibian Perspective' <<http://www.kas.de/upload/auslandshomepages/namibia/HumanRights/hinz.pdf>> 74, accessed 4 October 2018; See also Daniel Mekonnen, 'Indigenous Legal Tradition as a Supplement to African Transitional Justice Initiatives' (2010) 10 (3) *African Journal of Conflict Resolution* 107.

⁵T Webster, 'China's Human Rights Footprint in Africa' (2012) 51 *Colombia Journal of Transnational Law* 633; P Oyugi, 'The Right to Development in Africa: Lessons From China' in Carol C Ngang, Serges Djoyou Kamga and Vusi Gumede (eds.), *Perspectives on the Right to Development* (South Africa: Pretoria University Law Press, 2018) 273-297, 281.

⁶W Rodney, *How Europe Underdeveloped Africa* (London/Dar es Salaam: Bogle-L'Ouverture/Tanzania Publishing House, 1972) 58; D Cornell & K van Marle 'Exploring *Ubuntu*: Tentative Reflections' (2005) 5 *Africa Human Rights Law Journal* 220; Mekonnen (n 4) 106.

⁷T Pogge, 'Are we Violating the Human Rights of the World's Poor? Responses to Four Critics' (2014) 17(1) *Yale Human Rights and Development Journal* 76.

⁸OF Olayinka, 'From Communal Property Holding to Private Property Ownership: Whither the Public Sector Corruption and the Sustainable Development of Africa' 2021 pre-print, researchgate account, 9.

⁹Webster (n 5) 633; Oyugi (n 5) 281.

¹⁰K Obura, 'Unmasking the Phenomenon of Corruption: Perspectives From Legal Theory' (2014) 1 *Speculum Juris* 126; OF Olayinka, 2019b 'Policies to Prevent Corruption in Nigeria: Enforcement of the Right to Education' (2019) 3 (1) *Journal of Anti-corruption Law* 36 – 55, 42.

¹¹John Goodman and Gary Loveman, 'Does Privatization Serve the Public Interest?' (1991) *Havard Business Review*, <<https://hbr.org/1991/11/does-privatization-serve-the-public-interest>> accessed 10 December 2020.

¹²A Scott and P Seth, 'The Political Economy of Electricity Distribution in Developing Countries: A Review of the Literature', (2013) *An Overseas Development Institute Publication* <<https://www.odi.org/sites/odi.org.uk/files/odi-publications-opinion-files/8332.pdf>>; Mahmud I Imam, Tooraj Jamasb & Manuel Llorca, 'Power Sector Reform and Corruption: Evidence from Sub-Saharan Africa', Cambridge Working Paper in Economics 1801, 28 May 2018 <www.eprg.group.cam.ac.uk> 3.

¹³Kathleen Beegle *et al*, 'Poverty in a Rising Africa: Overview on Africa Poverty Report' <<https://openknowledge.worldbank.org/>> accessed 7 April 2019, 17; Art 37(1), Ethiopia, 1995; Mohammed, 2017, 54; OF Olayinka, 2019c, 'Towards the Sustenance of Democracy in Nigeria: The Role of an Independent Judiciary in Elections' in Adeola Romola & Jegede Ademola (eds.), *Governance in Nigeria post-1999: Revisiting the Democratic 'New Dawn' of the Fourth Republic* (Pretoria University Law Press, South Africa, 2019) 131-144, 137.

development of the vulnerable, who by virtue of that denial also miss access to justice under the formal western legal system, which is technical, costly and unaffordable. The access to justice by people who are marginalized economically in the circumstances cannot be guaranteed. The paper considers if it will not be rewarding to rather adopt the indigenous legal system which promoted equal access to justice, which is desired to attain sustainable development [14]. The prospects of attaining equal participation in economic activities [15], is considered under cultural revival, and resort to indigenous languages and the African Traditional Religion.

The next section presents indigenous legal tradition and it is followed in the third section by an examination of concepts of equality and in-equality such that manifest in the indigenous legal system and the western legal system. Section four examines how equal access to production and access to justice promotes sustainable development of a nation. Section five admits there are challenges faced by countries in Africa to attain sustainable development and recommendations are made on the way forward. Section six makes a conclusion.

2. Indigenous Legal Tradition

Africa had its strength in the un-adulterated indigenous legal tradition and culture and things were working for her. Culture is embedded in the indigenous legal tradition which denotes the African traditional way of doing things, being a framework for engagement with the natural and supernatural world [16]. Indigenous legal tradition manifests in oral myths, rituals and age-long customs, African languages, songs, tales, taboos as well as the tenets of the African Traditional Religion [17]. 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.

Customary law grew 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 [18]. Indigenous legal tradition and its relation with human rights as such has to do with what a people is, a people's culture, ways of doing things as captured in the mind, body and spirit of the people. 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 [19]. Indigenous African languages are important archives with a collection of the various aspects of life, philosophy on life subsistence [20]. This philosophy on life is observed and hold from one generation to the other by way of oral tradition. The law is encoded right into the language, and stories are told in local languages and cultural practices manifest in discussions made in indigenous languages [21].

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 [22]. 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 [23]. 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 [24]. The nature and perception of land give a clear picture of what a people is, the culture,

¹⁴Ebenezer Durojaye, Oluwafunmilola Adeniyi & Carol C Ngang, 'Access to Justice as a Mechanism for the Enforcement of the Right to Development in Africa' in Carol C Ngang, Serges Djoyou Kamga and Vusi Gumede (eds.) *Perspectives on the Right to Development* (Pretoria University Law Press, South Africa, 2018) 47 – 67, 56.

¹⁵Teferi Bekele Ayana, Wekgari Dulume Sima, 'Sustainable Development Laws In Ethiopia: Opportunities And Challenges Of Their Implementation' (2018) 9 (2) *Journal Of Sust. Dev. Law & Policy* 42.

¹⁶Funmi J Para-Mallam, 'Promoting Gender Equality in the Context of Nigerian Cultural and Religious Expression: Beyond Increasing Female Access to Education' (2010)40(4) *Compare: A Journal of Comparative and International Education* 459 – 477, 465.

¹⁷Clammer (n 1) 3; Fletcher (n 1) 17; Friedland (n 1) 10.

¹⁸OF Olayinka, *Rudiments of Nigerian Law* (NOLCO Publishing, Ibadan, Nigeria, 2008) 28; S Fabamise & I Aina, 'Sources of Law / Legislation' in A Taiwo & Ifeolu

Koni (eds.) *Jurisprudence and Legal Theory in Nigeria* (Princeton Publishing Lagos, Nigeria, 2019) 62-71, 62.

¹⁹Friedland (n 1) 8, 9; J Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) 139, 179.

²⁰Mberia (n 2) 57.

²¹Clammer (n 1) 3; B Mainville, 'Traditional Native Culture and Spirituality: A Way of Life That Governs us' (2010)8(1) *Indigenous Law Journal* 2; Fletcher (n 1); Friedland (n 1) 10.

²²Idowu (n 3) 163; Shyllon (n 3) 107.

²³RK Home, 'Land and the Right to Development in Africa' in Carol C Ngang, Serges Djoyou Kamga and Vusi Gumede (eds.) *Perspectives on the Right to Development* (Pretoria University Law Press, South Africa, 2018) 161-180, 163; Olayinka 2020b, 4.

²⁴I Watson, 'Aboriginal Relationships to the Natural World: Colonial "Protection" of Human Rights and the Environment' (2018) 9 (2) *Journal of Human Rights and the Environment* 119–140, 119; BL Gunn 'Protecting Indigenous Peoples' Lands: Making Room for the Application of Indigenous Peoples' Laws Within the

beliefs and ways of life, which the people manifest ^[25]. 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 ‘Indigenous Peoples’ in Africa as such 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 [²⁶]. The infiltration of the indigenous culture by western culture notwithstanding, the ‘Indigenous Peoples’ opt for a continuity of pre-colonial culture, with a view of preserving the ethnic identity, cultural patterns, social institutions and legal system ^[27].

Land as such determines Africans’ social, economic, political and spiritual being ^[28]. There was communal ownership of land, which was built on the general guiding principle of ‘groupness, sameness, co-operation, interdependence, collective responsibility and commonality’ ^[29]. 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. That system is a reflection of the ‘Ubuntu’ principle which emphasizes that one’s existence is only feasible because other people exist and, consequently, demands love, respect and just treatment for others ^[30]. The equality toga under the indigenous legal tradition is now examined.

3. Equality under the Legal Systems

3.1 Equality under the Indigenous Legal System

In the pre-colonial Africa, the position of equality among indigenous peoples was traced to the systemic open approach to land use ^[31]. Equal access of

the indigenous peoples of Africa to land arose on account of the land belonging to the community, in which every man who applied for parcel of land for cultivation got it, on condition that he ceded a portion of annual harvest to the community, represented by the traditional ruler ^[32]. 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 ^[33]. Aboriginal laws, cultures and knowledge systems flew from peoples’ perception of land, which dictated their obligations to care for the community as one would care for oneself ^[34]. 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.

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 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 as a trustee ^[35]. The indigenous institutions evolved with the community and they regulated and resolved various life problems in accordance with the applicable customary law ^[36]. Africa had cultural commonalities built around land ownership, which was tied to religious scheme and ancestral worship, leaving land as the most valuable of all material possessions having with it religious flavour. The land met the physical, mental and the spiritual needs of man, such that there was communion with the ancestral spirits through the land, for man’s sustenance ^[37]. 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

Canadian Legal System’ (2007) 6(1) *Indigenous Law Journal* 68.

²⁵ NJ Udombana, ‘Fighting corruption Seriously? Africa’s Anti-corruption Convention’ (2003) *Singapore Journal of International & Comparative Law* 485.

²⁶ AO Jegede, ‘Climate Change: Safeguarding Indigenous Peoples Through “Land sensitive” Adaptation Policy in Africa’ in WL Filho (ed.) *Handbook of Climate Change Adaptation*, 799-822, (Springer-Verlag Berlin Heidelberg, 2015) 799-822, 802.

²⁷ I Watson, *Aboriginal Peoples, Colonialism and International Law: Raw Law* (Routledge, Abingdon, 2015); Watson (n 24)123; OF Olayinka, 2020b ‘Gas Flaring as “Hell on Earth” for the Indigenous Peoples of Africa: “Coloniality” and Sustainable Development Goals and the Effect on the Niger-Delta Zone of Nigeria’ Paper presented at the Workshop sponsored by the Modern Law Review, U.K.; University of Exeter, UK and University of Witwatersrand, South Africa on Climate Litigation in Africa, University of

Witwatersrand, Johannesburg, South Africa. – August 26 – 27, 2020 <researchgate.com.> 4, 5.

²⁸Cornell & Karin van Marle, (n 6) 220; Mekonnen (n 4) 106; Home (n 23) 162.

²⁹Hinz (n 4) 74. See also Mekonnen (n 4).

³⁰Mberia (n 2) 56.

³¹Rodney (n 6) 57; Gunn (n 24) 69.

³²Webster (n 5) 633; Oyugi, n 5, 281).

³³MainVille (n 21) 3; Cobbah, 1987, 309; Oyugi (n 5) 294.

³⁴Watson (n 24) 119; MainVille (n 21) 4.

³⁵Rodney (n 6) 57.

³⁶Sitti Maskawati & Harlina Hamid, ‘Implementation of Indigenous People Values in Environmentally Sustainable Development’ (2018) (78) *Journal of Law, Policy and Globalization* 108.

³⁷J Studley, ‘Indigenous Sacred Natural Sites and Spiritual Governance: The Legal Case for Juristic Personhood (Routledge Focus 2019)’ Being Book Review by Roopa Madhav, (2020) 16(1) *Law, Environment and Development Journal* x, 2; Olayinka, 2020b (n 27) 5.

checks and balances in the handling of the same. 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 [38]. In the circumstances, every man had a just and equitable access to land as communal resource in the pre-colonial Africa [39]. 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* [40].

Income inequality manifest where substantial per cent of a population suffer economic depravity of their fair share of global household income [41]. The concept of equality embedded in culture, through the equal access to means of production, the effect on development cannot thus be over-emphasized. 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 [42]. Land in Africa, being the abode of sacred objects, ancestral altars, shrines and other cultural properties was thus, not for sale, except by he, who the gods would punish. The indigenous people admired the equitable access of everyone to land, being factor of production and were desirous of carrying on with it, sharing in common, bonded in brotherly love, and of which aboriginal laws and culture afforded equal access to justice.

3.2 In-Equality under Western Legal System

The western perception of development is that which places the individual interest above that of the community or state [43]. The colonisation of countries in Africa made way for the imposition of western laws on indigenous peoples, including Private Property Law. The colonial administration expropriated a large parcel of free-hold land, which were opened to individual purchase, mortgage and this incident cut across Africa, particularly Namibia, South Africa and also Angola [44]. Private property ownership came by way of 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 [45].

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 apply legal system that replay their colonial experiences and this is only complemented by indigenous or customary laws [46]. 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 [47]. The dual mandate policy of the imperial powers recognized parcels of land in urban centres, 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 native authorities [48]. Not less than 75 per cent of land tenure systems in rural areas in most African countries are however governed by customary laws [49].

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 [50]. The indigenous people 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 [51]. Ferguson argues that the property rights conceived and bequeathed to Africa by colonial powers were ‘killer apps’ [52]. Notwithstanding that private property holding violates the culture of equality and the prospect of development a nation [53], the African Charter and the constitution of post-independent African states approve of private property rights [54].

Private ownership of land and the subsequent in-equality in property relations is a reflection of a broken communal bond [55]. Private Property Law applies in countries of Africa, such that there is now common law and customary law regulating simultaneously, interests in land [56]. 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 law, which co-exist with the Common Law of England [57]. For instance,

³⁸Rodney (n 6) 57; Mekonnen (n 4) 2010.

³⁹Rodney (n 6) 58.

⁴⁰Rodney (n 6) 58; Cornell & van Marle (n 6) 220; Mekonnen (n 4) 106.

⁴¹Pogge (n 7) 76.

⁴²Shyllon (n 3) 104.

⁴³Webster (n 5) 633; Oyugi (n 5) 281.

⁴⁴Gunn (n 24) 68; Hinz (n 4) 75.

⁴⁵Home (n 23) 172.

⁴⁶Home (n 23) 166; J Griffiths, ‘What is Legal Pluralism?’ (1986)2(24) *Journal of Legal Pluralism and Unofficial Law* 6.

⁴⁷LA Ayinla, ‘Jurisprudential Perspectives on the Fountain of Nigeria Legal System’ (2019) 2 *AGORA International Journal of Juridical Sciences* 15 – 24, 20.

⁴⁸Home (n 23) 166.

⁴⁹Durojaye et al (n 14) 57.

⁵⁰Hinz (n 4) 75.

⁵¹Gunn (n 24) 32.

⁵²Home (n 23) 170.

⁵³Clammer (n 1) 3, 4.

⁵⁴Home (n 23) 172.

⁵⁵Hinz (n 4) 75.

⁵⁶Gunn (n 24) 33.

⁵⁷Griffiths (n 46) 6; AA Oba, ‘Islamic Law as Customary Law: The Changing Perspective in Nigeria’ (2002) 51 (4)

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 [58]. There is legal pluralism as indigenous law, Islamic law operate subject to the provisions of the Common Law [59]. The multiplicity, unwritten, diverse variations of customary law are of the greatest challenge in the codification of customary law in Africa [60].

Colonialism and the social-political and economic intrusion were done in an open disregard and disdain for the African people's dignity, right to indigenous legal system and self-determination [61]. The right of the Indigenous peoples to show equality links with the people's sovereign status prior to colonialism. Colonialism and the introduction of western law on private property as such militate against the full realization of the right of the people to equality. Henceforth, indigenous peoples lost control of their ancestral homes and source of livelihood. Western influence infected the African *ubuntu bond* with the Eurocentric viruses manifesting by way of '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 system [62]. The legal system has not been effective at curbing corruption in the Continent.

4. Equality towards Sustainable Development

Inequality arises on account of factors such as the circumstances of birth, parentage, sex, medical fitness, rural or urban location, access to education and others [63]. These inform access to openings within an economy which in turn explain what a youth becomes in adulthood [64]. The concept of equality follows the notion that everyone is born equal and as such should have equal enjoyment of human rights [65]. In-equality

leads to lower and less sustainable growth and thus less poverty reduction [66]. International human rights instruments as such advocate the fundamental human right to equality. Everyone is as such equally entitled to every right and freedom, without regard to political, national or international social origin, property, or sovereignty [67]. Article 1 of the Universal Declaration of Human Rights, 1948 as such highlights the value of brotherhood in the indigenous community, such that 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.

The sustainable development goals are however realizable based on the equal access to factors of production, and equal access to justice. The SDG requires an equal access to state resources and equality within a nation [68]. A state develops faster when it achieves equal opportunities for everyone to deliver his full potential [69]. Equal access to factors of production reduces income inequality [70], and attainment of shared prosperity [71]. The SDG and global visioning as such require the active participation of everyone on matters which affect him.

Unequal and preferential access to state resources violates the principles of fairness and that of the federal character principles. The violation of equal opportunity principles in Southern Africa is on account of race, and in Nigeria based on ethnicity [72]. Inequality leads to lower and less sustainable growth and thus less poverty reduction. Inequality in the distribution of wealth and resources results in poverty and under-development [73]. The growing level of inequality in Africa [74] explains why African economy which sometimes records growth fails to translate the same to development [75].

The International and Comparative Law Quarterly 817 – 850, 817; Durojaye et al (n 14) 57.

⁵⁸Ayinla (n 47) 20.

⁵⁹Griffiths (n 46) 6; Oba, Ibid; E A Taiwo, 'Justifications, Challenges and Constitutionality of the Penal Aspects of Shariah Law in Nigeria' (2008) 17(1) *Griffith Law Review* 190; Durojaye et al (n 14) 57.

⁶⁰A Sanni, *Introduction to Nigerian Legal Method* (Obafemi Awolowo University Press, Ile Ife, Nigeria, 2006) 252; Fabamise & Aina (n 18) 62.

⁶¹SJ Ndlovu-Gatsheni, 'Genealogies of Coloniality and Implications for Africa's Development' (2015)XL(3) **Africa Development** 13 – 40, 26.

⁶²M Mutua, 'Africa and the Rule of Law' (2016) *Sur - International Journal on Human Rights*165-167, 161; A Munyai & A Agbor, 'The Impact of Corruption on the Right to Development in Africa' in Carol C Ngang, Serges Djoyou Kanga and Vusi Gumede (eds) *Perspectives on the Right to Development* (Pretoria University Law Press: South Africa, 2018) 76; Olayinka 2019 b (n 10) 48.

⁶³Beegle *et al* (n 13) 17.

⁶⁴ibid 15.

⁶⁵Pereira 158.

⁶⁶Beegle *et al* (n 13) 15.

⁶⁷Article 2 UDHR (41).

⁶⁸See Goal 10, SDG (n 2).

⁶⁹ AfDB, 'President Adesina Announces Gender Innovation Contest to Promote Gender Equality in AfDB's Operations' < <https://www.afdb.org>> accessed 9 July 2019.

⁷⁰Goal 10 of the SDG.

⁷¹SDG 1.

⁷²Beegle (n 13) 17.

⁷³Ibid 155.

⁷⁴Mac Darrow, 'The Millennium Development Goals: Milestones or Millstones? Human Rights Priorities for the Post-2015 Development Agenda' (2015) 15 (1) *Yale Human Right Development Journal* 59, 60, 91.

⁷⁵Daouda Sembene, 'Poverty, Growth, and Inequality in Sub-Saharan Africa: Did the Walk Match the Talk under

4.1 Equal Participation towards Development

Active participation is a strategic step which ensures attainment of the people's dignity and freedom from manipulation, but importantly to secure improvement in the development process [76]. Achievement of sustainable development is only feasible with synergy at the international or national level, such that the 2030 SDG Goals are only realized under alliances and partnerships [77]. Development is recorded when people are able and willing to take advantage of opportunities to participate in an economy. It is the participation of the masses which shapes the development process and substantively defines development of the nation [78].

The right to development is achievable under a system which gives priority attention to the people's involvement and participation [79]. Participation and involvement of every citizen bridges communication gap, which hitherto led to conflict between the government and the citizens, which strive hinders development. Inequality and the lack of participation of citizens in the production cycle hinder sustainable development [80]. The exclusion of indigenous peoples from participation in respect of civil, political, economic, social and cultural affairs affects their right to development [81]. The citizens that usually experience limited access to land are the unemployed, the less educated, the physically challenged and the indigenous peoples, and they equally lack other human rights, basic social services, and the right to development.

The traditional rulers handle the management and allocation of land. The indigenous legal system allowed equality among community members, and is thus the right environment to achieve development in Africa [82]. 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 goals [83]. 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 [84]. Full participation of man in the production chain is thus feasible, where a state exercises its full sovereignty over natural wealth and resources and such control is not hijacked for personal gains [85].

Massive corruption in public offices results in the huge gap between the rich and the poor; it hinders economic development [86], and is the cause of the under-development of Africa. 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 [87]. This development is at variance with the right of every person to participate in the production cycle [88], and it explains why substantial per cent of population in Africa suffer economic depravity of their fair share of global household income [89]. Income in-equality in the circumstances enhances poverty which incidentally hinders equal access to justice which is technical and costly [90].

4.2 Corruption, Privatization and Development

Corruption is a dysfunction, which is traced to the loss of cultural values entrenched in the communal life in Africa. Corruption emanates from moral decay, wicked behaviour, putridity or rotteness which hinders proper service delivery, to which people are legitimately entitled [91]. The impact of corruption is felt where there is a compromise on the approved standards of doing things, just for a few to have personal gains [92]. Corruption militates against efficient resource planning

the PRSP Approach?' (2015) *International Monetary Fund Working Paper* 122.

⁷⁶ Coralie Bryant and Louise G White, *Managing Development in the Third World* (Boulder, Westview Press, 1982) 211.

⁷⁷ Ayana (n 15) 42.

⁷⁸ Hope 458.

⁷⁹ Webster (n 5) 633; Oyugi (n 5) 281, 285.

⁸⁰ See Goal 10, SDG.

⁸¹ E E Njeassam and MLM Mbao, 'Reflections on the Right to Development for Indigenous Peoples' in Carol C Ngang, Serges Djoyou Kamga and Vusi Gumede (eds.) *Perspectives on the Right to Development* (Pretoria University Law Press: South Africa, 2018) 138-160, 151.

⁸² Goal 10 of SDG.

⁸³ Udombana (n 25) 485; Clammer (n 1) 6.

⁸⁴ B Clavero, 'The Indigenous Rights of Participation and International Development Policies' (2005) 22 *Arizona Journal of International and Comparative Law* 97; Njeassam and Mbao (n 81) 152.

⁸⁵ CN Saah, '“Marianne” – The Symbol of Freedom: A Critical Analysis in Light of the Right to Development in Africa' in Carol C Ngang, Serges Djoyou Kamga and Vusi Gumede (eds.) *Perspectives on the Right to Development* (Pretoria University Law Press, South Africa, 2018) 12-33, 17.

⁸⁶ Darrow (n 74) 5, 91.

⁸⁷ Goal 16(3) of the SDG; Watson (n 24) 119.

⁸⁸ The African Charter on Human and Peoples' Rights, 1981.

⁸⁹ Pogge (n 7) 76.

⁹⁰ SDG 16.

⁹¹ BA Gebeye, 'The Legal Regime of Corruption in Ethiopia: An Assessment From International Law Perspective' (4)1 *Oromia Law Journal* 77; A Munyai & A Agbor, 'The Impact of Corruption on the Right to Development in Africa' in Carol C Ngang, Serges Djoyou Kamga and Vusi Gumede (eds.) *Perspectives on the Right to Development* (Pretoria University Law Press, South Africa) 70, 78.

⁹² Obura (n 10) 126; Olayinka 2019b (n 10) 42.

and allocation, and results in high institutional expenditures as a result of inflation of project cost, leading to the loss of social and economic development [93]. Corruption as such 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. Olayinka as such argues that corruption is an obstacle to the enjoyment of economic, social and cultural rights, as well as of civil and political rights in Africa [94].

In the 1960s, at the flag independence of countries in Africa, the indigenous political leadership inherited public utilities funded by the colonial administration. However, by the 1980s, the public utilities were being privatized. According to protagonists of privatization, this shift from public ownership and management to private ownership and management was meant to attain reduction in tariffs and to attain more customer satisfaction [95]. Privatization is adopted to attain increased efficiency, increased access, and choices from varieties and reduction in cost of service to consumers, all which afford better conditions than under the state owned monopolies. Africa and other developing countries also joined other parts of the world in adopting privatization for social, political and economic gains [96]. Telecommunications, road and transport infrastructure, energy supply, oil and petroleum services were as such privatized to reduce political interference, bureaucratic rigidities and for efficient management of utilities [97].

Consumers thought of having gotten over the public sector corruption hitherto associated with government controlled utilities, but being un-conscious of the booby-traps set, through the less than transparent privatization processes [98]. Corrupt political leadership simply ends up transferring ownership of public utilities to themselves. Corruption has devastating effects on development as the public office holders execute projects that are not people oriented, but those that meet personal expectations. Public sector corruption occurs in public offices and public enterprises, and it manifests in different circumstances. With the public sector

corruption the diversion and siphoning of public funds hinder the economic empowerment which the poor people in the communities need to be able to participate actively in the social, economic and political governance [99]. The absence of transparency and accountability in governance encourages corruption and this widens the gap between the poor and the rich and the inequality hinder development in Africa [100]. Consequently, the anticipated positive outcomes from privatization are not met as the poor get more impoverished through increased tariffs, harsh process of bills collection, unemployment and or under-employment, while the corrupt political leadership takes over economic activities and the returns thereon [101].

The communal ownership of land was thus a disincentive for any fraudulent conversion for selfish gains, as a Yoruba adage provides that 'he who steals the trumpet belonging to the community has no place to blow it [102]. Following the loss of cultural identity of Africa, public sector corruption becomes a culture as communities turn to celebrate riches, regardless of the source. This development portrays the adulterated societal value consequent on the breakdown of the original *Ubuntu* bond on account of colonialism. As such, corrupt political leaders incite religious, civil, and ethnic issues to cover up on their corrupt deeds in office [103]. 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 curing the endemic ailment called corruption.

With the introduction of private property ownership, desperate individuals set out to acquire personally, what was hitherto held commonly, and this explains the corruption which takes place in the private and in the public sectors of applicable countries. Thus, communal bonding eventually gave way, as private property ownership becomes one of the conditions of

⁹³(Munyai & Agbor (n 62) 86; Olayinka, 2019b (n 10) 43.

⁹⁴Olayinka 2019b (n 10) 52.

⁹⁵ John B Goodman and Gary W Loveman, 'Does Privatization Serve the Public Interest?' (1991) *Havard Business Review* <<https://hbr.org/1991/11/does-privatization-serve-the-public-interest>> accessed 10 January 2021.

⁹⁶Goodman and Loveman, *ibid*.

⁹⁷Mahmud I Imam, Tooraj Jamasb & Manuel Llorca, 'Power Sector Reform and Corruption: Evidence from Sub-Saharan Africa', Cambridge Working Paper in Economics 1801, 28 May 2018 <www.eprg.group.cam.ac.uk> 10.

⁹⁸Imam *et al*, *ibid*, 9.

⁹⁹Munyai & Agbor (n 62) 72, 76, 86.

¹⁰⁰*Ibid*, 86.

¹⁰¹ A Scott and P Seth, 'The Political Economy of Electricity Distribution in Developing Countries: A Review of the Literature' (2013) *An Overseas Development Institute Publication* <<https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8332.pdf>.>; Imam *et al* (n 97) 3.

¹⁰²Friedland (n 1) 8, 10.

¹⁰³Mutua (n 62) 161.

inequitable access to factors of production. This development makes 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 constituents. Fraud, absence of transparency and lack of accountability sustain public sector corruption [104]. Africa’s economy suffers a nose-dive given the in-effective legal system to investigate and try offenders and eventually enforce justice.

4.3 Equal Access to Justice and Development

Sustainable development is attained by the promotion of the rule of law, and equal access of everyone to justice [105]. 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 [106]. The state of justice administration has much impact on development of a state. Article 10 of the United Nations Universal Declaration of Human Rights (Universal Declaration) recognizes the right of everyone to a fair public hearing by an independent and impartial tribunal. The right to fair trial and access to justice are attained under a level of equality, before an independent, just and fair trial proceeding [107]. It also entails the availability of trial proceedings which is affordable, timely, effective and accessible [108].

Economic activities propel economic development, which is however not realized where the judicial system does not complement in the realization of the same. The judiciary is not supportive on sustainable development if it fails to give its best, particularly, by shortening the span of litigation which arises in the

course of economic activities [109]. For instance, in *Osakwe v Federal College of Education (Technical) Asaba & 2 Others* [110], the appellant’s appointment was terminated on the allegation of doing a full time Ph.D programme as a full time lecturer, without approval. The appellant filed action in court to contest his termination in 1992 and the case was eventually determined in 2010, a period of 18 years. In the case of delayed justice and denied justice as in this case, the legal and judicial system do not complement the nation’s development.

Equality before the law and the right to obtain effective remedy upon violation of fundamental rights and freedom are recognized under Article 7 and 8 of UDHR as well as under article 14 of ICCPR [111]. The formal justice system inherited from the imperial powers generally falls 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. The law is a critical tool for the implementation of substantive equality as it is for sustainable development as follows: [112] ‘The duty to protect entails that a state put in place legislation and state policies to give a conducive environment for the realization of rights’. Consequently, Goal 16 of the Sustainable Development Goal 2030 provides on peace, justice and strong institutions, such that promotes peaceful and inclusive societies for sustainable development. This is attained through equal access to justice, and effective institution that compels leadership accountability [113].

A corrupt public official who is arraigned in court has the political support of his accusers, particularly if he undertakes to join the ruling political party. The Defendant has enough contacts and resources to secure legal services of high ranking members of the Bar, and to curry the favors of leadership of the Bench, such that with compromise, judicial commission or omission and discretions right and left, he is deemed to be wrongly arraigned, and as such is discharged and

¹⁰⁴Munyai & Agbor (n 62) 76.

¹⁰⁵Goal 16, SDG; N Sultany, ‘The State of Progressive Constitutional Theory: The Paradox of Constitutional Democracy and the Project of Political Justification’ (2012) 47 *Harvard Civil Rights-Civil Liberties Law Review* 381, 382; JA Ferejohn & P Pasquino, ‘The Judiciary and the Popular Will: The Counter-majoritarian Opportunity’ (2012) 13 *U. Pa. J. Const. L.* 353, 354; A Cox, ‘Partisan Fairness and Redistricting Politics’ (2004) 79 *N.Y.U. L. Rev.* 751, 764.

¹⁰⁶Durojaye et al (n 14) 49.

¹⁰⁷Art 37(1), Ethiopia, 1995; Mohammed (n 13) 54; Olayinka, 2019c (n 13) 137.

¹⁰⁸G Metiku, ‘Access to Justice and Legal Aid in Ethiopia’ *Abissinialaw Information Justice Stability*, 21 July 2014 [online] Available from: <http://www.abissinialaw.com/blog-posts/item/1448-access-tojustice-and-legal-aid-in-ethiopia>; Mohammed

(n 13) 43-59, 54; Durojaye et al, (n 14) 51; OF Olayinka, 2020a ‘University Students’ Right to Fair Trial: How Adequate is Legal Protection?’ (2020) 7 (3) *Int. J. Human Rights and Constitutional Studies* 247–263, 258.

¹⁰⁹OF Olayinka, ‘The Corporate Affairs Commission and the Challenges of Economic Transformation in Nigeria’ (2017)(8)3 *The Gravitas Review of Business and Property Law* 58–69, 64.

¹¹⁰*Osakwe v Federal College of Education (Technical) Asaba & 2 Others* (2010) 5 SCM 185.

¹¹¹Mohammed (n 13) 54.

¹¹²OF Olayinka, 2019a ‘Implementing the Socio-economic and Cultural Rights in Nigeria and South Africa: Justiciability of Economic Rights’ (2019)27(4) *African Journal of International and Comparative Law* 564–587, 573.

¹¹³Goal 16 (3) SDG.

acquitted of corruption charges. This development does not align with the major objective of sustainable development, which is that everyone is deemed to be equal before the law and to be equally accountable before the law [114].

The courts in the post-colonial Africa are expensive, remote, complex, and time consuming [115], unlike the equal access to justice under the indigenous legal system. This alludes to the fact that justice dispensation in each country is peculiar, being deeply rooted in history, politics, values, customs, and traditions. Indigenous peoples have their native justice concepts and systems. The informal and the indigenous systems are used to settle not only family disputes, but also entitlement to land and natural resources at the community level [116]. 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 [117]. Not surprisingly, most people in developing countries of Africa turn to the informal or customary forms of justice system. The indigenous legal system as such promotes equal access to justice among the indigenes, which step is desired for sustainable development. It particularly promotes restorative justice, which makes it a more viable option over the formal justice system [118]. Access to justice, the rule of law and the sustainable development are however realizable based on equal access to factors of production [119].

5. Challenges and Recommendations on Equality and Sustainable Development

5.1. Development Based on Cultural Concepts

The United Nations through the Sustainable Development Goals envisage there can be development of all nations at the global level [120]. However, 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. Culture is a way of life, attitude of a people which work for the attainment of development of human capital, critical infrastructures, regional competitiveness, environmental sustainability, social inclusion, health safety and literacy [121]. Consequently, development which is conceived outside cultural considerations is baseless, unsupportive and unsustainable.

Thus, to Clammer, it is worthwhile to adequately triangulate culture, development and sustainability [122], because there is no serious development without sustainability [123]. Globalization, civilization and coloniality all work on the psyche of the indigenous African as he is made to believe in the superiority of foreign culture, which in turn keeps Africa in subservient position [124]. 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 [125]. As such, Article 17 (2) of the African Charter on Human and Peoples' Rights allows every individual to freely take part in the cultural life of his community. It is thus the duty of the state to protect morals, culture and traditional values of the community, which in turn drives a nation's development [126].

The pathway by which inequality evolves thus matters for development to evolve [127]. In proffering solutions to African problems, and to sustain the gains of the past and present generation, without mortgaging the best interest of the coming generation, constitutionalization of the cultural rights is desired to attain developmental rights [128]. Resort should be made to the *Ubuntu* principles having communal focus on

¹¹⁴Irene Khan, 'How Can the Rule of Law Advance Sustainable Development in a Troubled and Turbulent World?' 23 June 2017 Gonthier Memorial Lecture, Montreal, (2017) 13 (2) *MJSDL – RDDDM* 214.

¹¹⁵Khan, *ibid*, 217.

¹¹⁶Khan (n 122) 217.

¹¹⁷Studley (n 37) 1.

¹¹⁸Durojaye et al, (n 14) 56.

¹¹⁹(Goal 16(3), SDG; Sultany (n 105) 381, 382; Ferejohn & Pasquino (n 105) 353, 354; Cox (n 105) 751, 764.

¹²⁰Goal 10 of SDG.

¹²¹Saah (n 85) 15.

¹²²Clammer (n 1) 9.

¹²³Clammer, *ibid*.

¹²⁴S Mehmood, 'The Infamous Macaulay Speech That Never was' *The Friday Times*, <<https://www.thefridaytimes.com>> accessed 23 April, 2020; A Babalola, 'The Role of Traditional Rulers – Sanusi the Genius: A Case Study (4)' *Nigerian Tribune*

16 April 2020 <<https://tribuneonline.com>> accessed 23 April 2020.

¹²⁵R Stavenhagen, 'Cultural Rights and Universal Human Rights' in A Eide et al (eds.) *Economic, Social and Cultural Rights* (Dordrecht: Martinus Nijhoff Publishers, 1995) 63-77, 65, 66; Clammer (n 1) 3; M Ferri, 'The Recognition of the Right to Cultural Identity Under (and beyond) International Human Rights Law' (2018) 22 *Journal of Law, Social Justice & Global Development* 1-26, 4.

¹²⁶Article 17 (3) African Charter; R Adeola, 'The Right to Development Under the African Charter: Is There an Extraterritorial Reach?' in Carol C Ngang, Serges Djoyou Kamga and Vusi Gumede (eds.) *Perspectives on the Right to Development* (Pretoria University Law Press, South Africa, 2018) 34 – 46, 38.

¹²⁷Beegle (n 13) 15.

¹²⁸NW Orago, 'Limitation of Socio-economic Rights in the 2010 Kenyan Constitution: A Proposal for the

development [129], devoid of public sector corruption, and income inequality.

5.2 Legal System and Indigenous Oath of Office as Recipe for Impunity in Public Offices

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 [130]. The colonial states substituted the efficacious indigenous justice institution [131], with the western legal system. It has however been observed that Governments in countries of Africa make policies and legislation and establish institutions at the national and at the regional levels [132], to prevent corruption, which is the offshoot of private property holding, but the efforts are not fruitful.

In the circumstances, the western legal system does not promote the desired equal access to justice, nor the rule of law required for sustainable development in countries of Africa. The western legal system which is applied distinct from the African culture has the record of delivering judgments without justice, judgments that sow seed of discord among brothers and family members [133]. Consequently, it is observed that the formal legal system turns out, being unfit for purpose, especially as it is technical, slow and costly and generally hinders access to justice [134].

Consequently, a public official is arraigned on allegation of corruption having failed to give account of his stewardship and he escapes justice not on the merit of his defense. The indigenous legal system nonetheless 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 [135]. The indigenous legal system as such promotes equal access to justice 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 [136].

In practical terms, the closeness of man to nature, the land and soil make it feasible for ancestral spirits to act as witnesses on the enforcement of peoples' rights and obligations and general covenants. This makes it instructive, given the assertion that judgment belongs to the earth, upon which a people have covenants [137]. The ancestral spirits in each community do punish culprits in the circumstances of breaches of covenants, sharp practices on a person or to the community. Ancestral spirits occupy vantage position to witness every human transactions and this makes the judicial processes which normally take place in the physical realm to be unnecessary. For man however, the trial proceedings which are handled by ancestral spirits, the gods and goddesses dispenses cheap, simple and fast, affording equal access everyone to justice, which is also user friendly. With this efficacious indigenous legal system, leadership processing takes place, to engage committed leaders who are desirous of serving their constituents at the grassroots and at national levels.

Official oath taking by elective officials or political appointees are meant to secure the commitments and to discourage dishonest attitude and evil actions in a nation [138]. It has been observed however that people who opt to serve in the public or elective capacities prefer to take oath of office by the standards of the Bible or the Quran, which has little or no consequences with oaths violation. Political office holders should then be made to take oath of office, swearing by the land or by the gods which assures of immediate sanction for violating oath of office. Recourse to the indigenous oath of office is thus the African recipe and effective check to impunity in public offices.

5.3 Indigenous Languages and Economic Participation

The essence of having the indigenous peoples of Africa to vigorously participate in their nation's economic activities is to secure sustainable development [139]. The SDGs are realizable where all hands are on deck [140]. Africa is a Continent with 54 Countries, having indigenous languages ranging between 1,500 and 2,000 with varying dialects [141]. The combined contribution of the indigenous languages to the economic

Adoption of a Proportionality Approach in the Judicial Adjudication of Socio-economic Rights Disputes' (2013) 16(5) *PER/PELJ* 178; Olayinka, 2019a (n 112) 569.

¹²⁹Sembene (n 75).

¹³⁰F Kariuki, 'Applicability of Traditional Dispute Resolution Mechanisms in Criminal Cases in Kenya: Case Study of *Republic v Mohamed Abdow Mohamed*' (2014)2 *Alternative Dispute Resolution Journal* 202; Olayinka 2020a (n 108) 64; Durojaye et al, n 14, 56; Goal 10 of SDG.

¹³¹Article 7 and 8 of UDHR; Mekonnen (n 4) 109; Mohammed (n 13) 55.

¹³²Olayinka, 2019a (n 112) 565.

¹³³Durojaye et al (n 14) 50.

¹³⁴Olayinka, 2020a (n 108) 5.

¹³⁵Article 7 and 8 of UDHR; Mekonnen (n 4) 109; Mohammed (n 13) 55.

¹³⁶Kariuki (n 130) 202; Durojaye et al (n 14) 56.

¹³⁷Idowu (n 3) 163; Shyllon (n 3) 107.

¹³⁸Comfort Chinyere Ani, 'Crime and Punishment in African Indigenous Law' <<https://legalpediaonline.com/african-indigenous-law/>> accessed 14 January 2021.

¹³⁹Bryant and White (n 76) 211.

¹⁴⁰Ayana (n 15) 42

¹⁴¹Mberia (n 2) 57

development in any given day far outweighs the contribution of the European languages that are recognized as official languages [142].

The indigenous languages contribute immensely to the continent's economic activities and development [143]. It is thus not feasible to attempt to have active participation of the indigenous peoples of Africa in economic development when their lingua franca – that is, the language spoken by the majority of Africans in conducting their business activities are not officially recognized. For the not less than five centuries of slavery and colonialism, the self-esteem of the colonized people, their self-esteem, trust and faith in their ability to innovate or to contribute worthwhile ideas on the economic development were lost. They could not also participate actively in the economy [144]. The indigenous peoples of Africa however get motivated, realizing that indigenous languages are substantially used in communications and in negotiating terms of contract. The respect the people thus accord to their languages turns round to raise their self-esteem and confidence [145]. It is rather anti-productive to adopt unpopular foreign languages as official languages, in a way prejudicial to most Africans who are thus tagged 'illiterates.' Since indigenous culture is the vehicle towards development, Countries of Africa have to embark on serious cultural sensitization using the medium of indigenous languages in the print and electronic media and in other formal education platforms, to attain development [146].

6. CONCLUSION

The paper identified communities in Africa, who in the pre-colonial times lived as one big family, of which there was free and equal access of everyone to land as the main factor of production. Everyone who applied for a parcel of land for agricultural purposes got it [147]. The community members related with each other in a just and equitable manner, in love on the principles of *Ubuntu* [148]. That tradition of equality however suffered a set-back under colonial administration and the post-colonial Africa. Colonial administration as such created sustainable in-equality, through stratification in the line of property ownership. Those who have property are the ones who are active participants in the economic activities of a nation. That vantage position makes the formal, western justice system accessible to them. The legal system with its technical demands does not pose any threat to the propertied class, as they have the means to secure services of lawyers, to get them justice.

In the new stratified society, political leadership in their bid to own public utilities in person introduced privatization as from the 1980s. The arguments in support of privatization that the indigenous peoples would be better for it [149], in terms of affordable tariffs, and more access to factors of production and more participation in economic activities are not realised [150]. What is however realized is day-light-robbery of the people, a mere change in ownership, following compromised privatization processes.

The indigenous Africans desire recourse to the *Ubuntu* doctrine which assures of equal access to production and to justice. This position is resisted by the western legal system which recognizes political elite as being above the law. The hopes of increasing the peoples participation in economic activities in the circumstances depends on what due recognition that can be accorded the lingua franca. Equally, the African Traditional Religion [151], which has been relegated to the background has to be revived, so that the language and religion can serve as vehicle to take *ubuntu* to the next generation [152].

¹⁴²Ibid.

¹⁴³Ibid.

¹⁴⁴Ibid, 56.

¹⁴⁵Anouk Zijlma, 'A Guide to African Languages Listed by Country' <<https://www.tripsavvy.com/indigenous-african-languages-1454069>> accessed 5 January 2021.

¹⁴⁶Mberia (n 2) 57.

¹⁴⁷Webster (n 5) 633; Oyugi (n 5) 281.

¹⁴⁸(Rodney (n 6) 58; Cornell & van Marle (n 6) 220; Mekonnen (n 4) 106.

¹⁴⁹Goodman and Loveman (n 95).

¹⁵⁰Ayana (n 15) 42.

¹⁵¹Clammer (n 1) 3; Fletcher (n 1) 17; Friedland (n 1) 10.

¹⁵²Mberia (n 2) 57.