

# COLONIAL HERITAGE, MEMORY and SUSTAINABILITY in AFRICA CHALLENGES, OPPORTUNITIES AND PROSPECT

EDITED BY

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### Memorial Heritage as Fountain of Peace and Justice in Africa: The Case of *Ifá* in Nigeria

*Òkewande Olúnwólé Tẹ̀wógboyè*

#### Introduction

This chapter focuses on *Ifá* as memorial heritage of safe justice in Yorùbá tradition. *Ifá* is seen to be the foundation of Yorùbá culture. This means every aspect of Yorùbá life, including religion, philosophy, science, ideology and so on has one link or another with *Ifá*.

The work relies substantially on secondary data from Yorùbá literary texts, especially *Ifá* corpora and philosophy associated with the memory of administration of justice among the Yorùbá of West Africa. The knowledge of *Ifá* is central to the establishment of the traditional system of dispensation of justice, this is because, any aspect of Yorùbá life that is not sourced in *Ifá* may just be a mirage, because *Ifá* is seen “as store house through which the Yorùbá comprehend their own historical experience and understand their environment” (Abimbólá 1977: 31). Qbáyomí (1983: 7) notes that “*Ifá* is fundamental in the explanation of the components of the Yorùbá culture” in other words, there is no aspect of Yorùbá life that is not entrenched in *Ifá*; or any aspect that lacks *Ifá* reference may be “controversial.” In other words, *Ifá* serves as intangible heritage among the Yorùbá of Africa.

The chapter is sub-divided into: the Yorùbá intangible heritage and dispensation of justice, the Yorùbá traditional judicial institutions and powers as intangible heritage and the Yorùbá memorial heritage of suit-filing, hearing, and judgment execution. The chapter concludes that there has been a formidable, reliable and dependable traditional memorial judicial system of peace and justice among the Yorùbá. And that, this memorial heritage system



can stand the test of time, as most of the modern principles are not foreign to the African memorial judicial process.

### The Yorùbá Traditional System: Setting the Background

This work examines the Yorùbá memorial heritage in the dispensation of justice with reference to *Ifá* and Yorùbá philosophy. Memorial heritage is a constituent of intangible heritage expressed through historical recounts, proverbs, idioms, songs and other “traditional” expressions. *Ifá* has been defined by scholars in different ways that establish the inexplicable and unlimited scope of its knowledge, wisdom and values. Indeed, it is regarded as the bedrock of other aspects of Yorùbá life. For this reason, to simply define it as a religion, without exploring its social and cultural links will be inadequate. Akintolá (1999: 1) views *Ifá* as the philosophy of or wisdom divinely revealed to the Yorùbá deity of *Ifá*, *Òrúnmìlà*. Farrow (1926: 36) avers, *Ifá* is the greatest oracle of the whole of the Yorùbá that is “consulted on all important occasions.” *Ifá* is regarded as the spokesperson not only for the gods but also for the living. It is regarded as the living foundation of Yorùbá culture (Abimbólá 1977a: 14). Munoz (2003: 179) sees *Ifá*’s scope beyond the Yorùbá cultural society when he says “*Ifá* is the most universal divinity among the Yorùbá and other West African people.”

*Ifá* is known to different people by different names throughout the world. For example, *Ifá* is known as *Fá* among the Fon of Republic of Benin, *Eva* to Nupes, *Ifá* in Cuba, USA, Brazil, Trinidad and Tobago, Jamaica, Surinam and Togo. *Ifá* is referred to by the Ewe as *Afa*, *Ephod* by Jews, *Geomancy* by Europeans and Margays (Odeyemi 2013: 5). With these different realizations of *Ifá* nomenclature which cut across nations of the world, the prominence of *Ifá* can neither be underestimated nor doubted. In fact, *Ifá* has over 70 million followers in Africa and the Americas. Adeoye (1985: 174), giving meaning to the name and origin of *Ifá*, contends that “*Ifá*” was loaned from Egypt to Yorùbá language. There are historical evidences to support this claim. For instance, Johnson (1921: 7) claims that Yorùbá languages, “spring from

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Upper Egypt or Nubia". Àtandá (1980: 2) argues that "their real place of origin was either Egypt or Nubia."

In 2005, the United Nations Educational, Scientific and Cultural Organization (UNESCO) proclaimed *Ifá* as one of the 86 traditions of the world to be recognized as masterpieces of oral and intangible heritage of humanity (Robinson 2008). By this proclamation, *Ifá* joined the league of heritages and therefore requiring urgent preservation. *Ifá*, as a religion, science or literary text, has over time been of great interest to scholars in different areas of human endeavours, like medicine, philosophy, religion, art and culture. For instance, Akiwówo (1983: 139-157) examines the various *oríkì* (panegyrics) of *Ifá/Òrúnmìlà* from the sociological perspective. He associates different meanings with *oríkì Òrúnmìlà* that show different socio-religious values. The *oríkì* manifests and establishes the fact that the knowledge, wisdom and values of *Ifá/Òrúnmìlà* are inexhaustible. The work of Abimbólà (1975: 25-6) focuses on the concepts of *orí* (head), *ẹbọ* (sacrifice), and *ìwàpẹ̀lẹ̀* (humility), their relationships, and how they complement each other in the Yorùbá belief and value system, with reference to *Ifá/Òrúnmìlà*. The work of McGee (1983: 95-114) focuses on mathematical observations in the *Ifá* divination system. He examines the prime factors in *ẹ̀sẹ-ìfá* (*Ifá* poems) and links the existing symbols in *Ifá* with mathematical formulae. His inquiry establishes that *Ifá's* knowledge is based on some mathematical knowledge and principles.

One of the reliable ways to establish the veracity of Yorùbá culture is to reference its etymology from *Ifá*. According to Nobles and Goddard (1984: 75), "there are many different ways to discuss the Black family literature as there are techniques for developing and/or documenting the lifestyles of Black people [...] Black culture is a belief in and/or direct practice of traditional African cosmological, ontological and philosophical understanding of the universe." In this regard, any findings on the Yorùbá culture that is not rooted in *Ifá* may just be a mirage. But, "what still survives in oral tradition and oral literature, particularly in *Ifá* corpus, is a good indication of the intellectual achievement of the Yorùbá" (Àtandá 1980: 29). Ọbáyọmí (1983: 76) succinctly put it that *Ifá* "is fundamental in the explanation of the components of the Yorùbá

culture.” In other words, the present attempt is aimed at establishing through *Ifá* the traditional administration of justice in Yorùbá tradition. Matterson and Jones (2000: 95) observed that “keeping poetry alive meant keeping it in touch with what is considered its vital origins in orality.” This chapter, therefore, demonstrates that the process, principles and procedures for securing a safe justice is fully entrenched in *Ifá*; the application of which made the Yorùbá society to experience peace before the introduction of the “modern” method of dispensation of justice is instituted. Furthermore, the whole of *Ifá* is philosophical in nature. In other words, *Ifá* messages are rendered in metaphor. This is why Akintóla (1999: 1) observes that “*Ifá* is the philosophy of, or wisdom divinely revealed to Òrúnmìlà” therefore, it may be impossible to delve into the memory of the Yorùbá philosophy without the knowledge of *Ifá*. There is also no aspect of life-human, animals, materials that are left out in *Ifá*. Agbájé (2005:1) asserts that Yorùbá philosophy “has to do with life, perhaps in human beings, animals, rocks, soil and plants...” *Ifá* is a vehicle of Yorùbá philosophy. “Yorùbá philosophy and values are preserved and disseminated through *Ifá* medium” (Abimbólá 1977a: 14). This is why Šótundé (2009: 52) asserts that “Yorùbá proverbialism is a complete representation of the Yorùbá philosophy of life.” These philosophical statements are facts and representation of truth. Šótundé (2009: 21) reports that “every proverb is truism, re-stating a philosophical dogma.” Proverbs have been observed to have met all the attributes of philosophy. Šótundé (2009: 2) categorizes sources of proverbs into three aspects: the social interaction between people, the folkloric experiences and communities and the animism and animatism “through which primitive people sought and found a meaning for existence in relation to their immediate natural environment.”

The hermetic aspect of philosophy is useful in the present understanding of the Yorùbá philosophy under examination. On this note, Crofton (2000: 89 & 90) aptly notes, “the belief that there is a secret, ancient body of wisdom, surviving in written texts of the 1<sup>st</sup>-3<sup>rd</sup> centuries AD that accurately discusses the working of the natural and supernatural worlds and that mastery of these texts



provides an enhanced understanding and control of nature.” There are ancient philosophical values by which the ancient people (Yorùbá) regulate themselves and their society. In addition, there is no aspect of human life uncovered by these philosophical values. One of these aspects of life is how the Yorùbá secure safe justice through the memorial philosophical heritage. This observation was made by Agbájé (2005: 51) that “The Yorùbá traditional philosophy has reached a remarkable level because of the social structure which is a guarantee of freedom, peace stability, law and order.”

### **The Yorùbá Intangible Heritage of Traditional Institutions in the Dispensation of Justice**

The hierarchical memorial institutions of justice put the *Olódùmarè* (God) at the elms of judicial affairs. He is regarded as *adákédájó* (a silent judge). His power of omniscient and omnipresent is unquestionable. The Yorùbá do remember that “*Olúwa ló mejò dá*” (God is an incorruptible judge). As he is regarded as the Supreme Being, his supremacy power is incontestable. To the Yorùbás “*Olórún dá ọ l’ẹjọ, o ní kò tẹ ọ l’órùn, níbo ni o tún fẹ ro ẹjọ rẹ?*” (You are judged by God and you are contemplating of an appealing the judgment; where do you want to present the case again?) (Adeoyè 1985: 52). The application of natural laws as regulator of judgment is at play in this instance. It is one of the African memorial heritages of dispensation of justice. This is scientific generalization that both explains and predicts physical phenomena as laws of nature are generally assumed to be descriptive of and applicable to the world. The natural law (under the control of God the Almighty) is superior to all other human laws or legal systems. It is a balanced and impartial one. This law is universally enforceable on human activities. Philosophers such as Plato, Aristotle, Aquinas and Grotius believed in natural law, which is universal, ‘natural’ to humanity, identical with morality, and the standard against which all secular laws, should be judged. Akíntólá (1999: 98 & 9) reports that:

It is because this code of Natural Laws derives from *Òrúnmìlà*...has been predicated by the logic of Yorùbá Metaphysics. This same fundamental Code of Natural Laws also constitutes the foundation of all Ethics...it is also from this same code that all Legal systems, of all ages, derive...Accordingly, Yorùbá Ethics is therefore a breakdown of, or derivation from that code of behaviour enunciated by *Olódùmare* Himself to govern the activities and inter-creature group relationships among divinities and human beings.

The supremacy of law is entrenched in the natural law and enacted by God. Law is intended by the Society as the instrument of justice; but that assumes that the laws themselves are just. Law is often used by a particular society to implement its morality. Crofton (2000: 114) reports that "this means laws serve as a regulator of control of attitude and behaviour for a peaceful society. Law is also superior; is greater than the rulers and their subjects as well." In the Yorùbá traditional system, there are norms that regulate the activities of an individual and those of the society as a whole. Aláké (2004: 23) affirms that, a norm "is a specific guide to action which defines the acceptable and appropriate behaviour in particular situation." The regard and respect for the moral laws among the "traditional" Yorùbá guarantee a safe and peaceful society. Àtandá (1980: 29) says, "The Yorùbá feared violating moral laws, particularly in their dealings with their fellow human beings. The results of all this was that the rate of crime among the Yorùbá up to 1800 was extremely low", because, people feared the repercussions of the impartial judgment in regards to punishment for violating societal rules. Besides the societal norms, customs, moral and natural laws, there are unwritten laws which are strictly adhered to, from *oba* (the king) to the ordinary man in the society which serves as memorial heritage. Character, attitude and behaviours of people are regulated under the ambit of these unwritten rules or laws, including the king. As Johnson (1921: 49) reminds us "although, the king as supreme is vested with absolute power, yet, the power must be exercised within the limit of the unwritten constitution." There are checks and balances and separation of power in the Yorùbá

political system. This is an important memorial heritage among the Africans especially, the Yorùbá of West Africa.

Next to the *Olódumare* are the deities or the gods and the supernatural spirits. These are numerous in number and their attributes and scope of power. What is important here is to recognize them as authorities in the dispensation of justice in Yorùbá tradition. As Káyòdé (1984: 4) avers that "Divinities are believed to have been brought into being by the Supreme Being and each divinity has a role to play in the 'governmental' set-up of life in the community...there are those in charge of maintaining justice such as the god of iron and thunder." The divinities are deeply involved in the administration of memorial safe justice among the Yorùbás. In fact, in some instances, the ancestors are believed to play an active role towards ensuring a safe justice, especially in family matters, such as controversial chieftaincy crises, sharing of the family properties or when a case of mistrust among family members arises. The spirits of the living-dead are sometimes invoked as arbiters of memorial heritage for securing safe justice among the Africans. "Death is merely a veil as the dead still interact in some inexplicable ways with the living" (Adétugbò 2001:7). Káyòdé (1984: 4) notes that:

Life has no value at all if the presence and power of ancestral spirits are excluded...To Africans, ancestors are not dead, buried and gone forever. They inhabit the spiritual world and still take active interest in the affairs of their families. There is strong belief that physical death does not put an end to existence.

This implies that the Yorùbá gods and the spirits are not excluded in guaranteeing a safe justice in the society. The involvement of the memory of the spirit being into the process of safe justice in Yorùbá society gives room for the reliability and dependability of the Yorùbá judicial system, because the power and process of dispensation of justice is not only residing on human beings alone, but along with supernatural and spiritual beings as well. Sometimes, the culprits are reprimanded by the supernatural



powers and the gods. "It is strongly believed that anyone who works against community life will be punished by the gods" (Káyòdé 1984: 5). The gods are not to blame.

Next in power of authority in the dispensation of safe justice among the Yorùbá is the king. The Yorùbá believes king is second in command to the gods, divinities or the supernatural beings. The king is regarded as *aláṣẹ èkejì òrìṣà* (second in command of authority to the gods). Káyòdé (1984: 5) reports that "at least in the African traditional communities, kings and chiefs are accorded due respect and are believed to be 'second to the divinities.'" *Ifá Ọkànràn Ìwòrì* in (Sàlámì 2002: 410) claims that:

...Nígba ìwáṣẹ  
 Àwọn ọba n tòrun bò wálé ayé  
 Ilé ayé tí àwọn n lọ yíi dáa báyii?  
 Wọn bá tọ Ọrúnmilà lọ  
 Ọrúnmilà níwọ Ọba  
 Ìwọ nìkan ló borí gbogbo èniyàn láyé...  
 Ilé ayé bá tẹjú  
 Pẹ̀rẹ̀sẹ̀ láyé lọ...  
 Wọn ní taa lẹ rí pẹ̀lú ẹ...?  
 Wọn ní a rí Akódá  
 Wọn ní a rí Aṣẹ́dá  
 Wọn ní a rí Oluwo  
 Wọn ní a rí Odùgbònà  
 Wọn ní a rí Àgbọ̀ngbọ̀n.../

In the ancient time  
 The kings were coming down from heaven to the earth  
 will this world they are going be pleasant for them?  
 They went to Ọrúnmilà  
 Ọrúnmilà said, you the king  
 You are to dominate on all the human beings on earth...  
 The earth was flat spread  
 The earth spread without an end...  
 They said who do you see with him?  
 They said we saw Akódá

They said we saw *Aṣẹdà*  
 They said we saw *Olúwo*  
 They said we saw *Odùgbònà*  
 They said we saw *Àgbongbòn...*

The power and the authority of the king is entrenched, enforced and endorsed by the *Ifá*. Odegbola (2014, p. 179) reports from *Odu-Ifá Ìwori Wówo* that “*Tifá loba*” (*Ifá* owns the king). This domineering power of the king is divine as well. Likewise, the earth is to be administered by the five chiefs, who happened to be first chiefs on the surface of the earth. These chiefs are found to be *Ifá* chiefs as well (Adeoye 1985). The Yorubás believe that “*Ọba l’ó ni ayé, ọ̀rìṣà ni ó sì ni Ọba, ṣùgbòn, Ọlórún ni olówó àwọn ọ̀rìṣà*” (the king owns the earth, the deities owns the king but God is the controller of the deities) (Adeoye 1985: 52 & 188). The memorial heritage of administration of justice is in the order of authority laid down in *Ifá*. The king is sometimes regarded and respected just as the gods, deities or divinities. In this regards, *oba* is a living divinity or god. He has both the spiritual and temporal unchallenging power. He is *ikú bàbá jeyé* (the one reserved with the power to kill). His power to kill is exercised in the administration of justice. His personality and status is always respected and honoured for “*arọ́bafin loba pa*” (The king kills the one that is disrespectful to him). He can pronounce death sentence and pardon on an accused. *Oba* represents both the dead and the living. Maciver and Page-Charles (1950: 603) assert that “Dead heroes, dead kings, and ancestors, real or mythical, are translated to the ranks of the gods, and the living kings already possess the attribute of divinity.” As powerful as the king is in the Yorubá tradition, there are institutional checks on him and his activities, including on judicial matters. The power of *afobaje* (king makers) is exercised in case the king behaves *ultra vires* (Adeoye 1979: 273). He has as many as *baalẹ* (village heads) and *ijoye* (chiefs) under his jurisdiction as possible, depending on the scope of his territorial power. The position of *Oba* is graded in Yorubá land. There are first class *Oba*, second class and so on. Their class is as well associated with their power. This is also influenced by their judicial power as well. For instance, it is not

all the *Ọba* that are vested with the power to pronounce capital punishment on the accused. This is why it is often said that “*Ọba ju Ọba lẹ, ìjọyẹ ju ìjọyẹ lẹ*” (King is more than king as Chief is more than a chief). Their superiority or seniority is determined by their traditional roles, including judicial function. Some *Ọbas* do prostrate for another *Ọba* as a sign and mark of respect. This respect that is accorded to the king is unconnected with age disparity, but as a symbol of respect for the office holder, in this case, *Ọba*. This is why the Yorùbá do classify some *Ọbas* as “*Ọba tí gba ìdòbálẹ Ọba*” (A king that other kings prostrate for). There are two categories of chiefs under *Ọba*. The first is the family chief. He is referred to as *oloyè-ilé* (family chief), and his office is *oyè-ilé* (chieftaincy title). The office is hereditary. In this case, the chief occupies the position of his fore-fathers. Some of the hereditary chieftaincy titles in Yorùbá tradition are; *Ọtún-àgòrò*, *Jagun*, *Ààrẹ-àgò*, *Balógun*, *Abẹsẹ*, *Baṣòrun* and so on. This category of chief are involved memorial heritage in the administration of justice, as they occupy a traditional office; their roles is also traditional in nature. They act as Chiefs-in-council for the king. In fact, some chieftaincy office are rated and accorded with respect of the king's status, for instance, *Baṣòrun* in the political administration of *Ọyọ*. Restricted judicial power is accorded to him because he can be cautioned and checked, just as he acts as checks to *Alaáfin* (Smith 1983: 42-64). Johnson (1921: 69) says “but if he is ultra-tyrannical and withal unconstitutional and unacceptable to the nation it is *Baṣòrun*'s prerogative as the mouth-piece of the people to move his rejection as a king in which case His Majesty has no alternative but to take poison and die.” This is referred to as “war chiefs” (Fádípẹ 1970: 232). The second category of the chiefs is the honorary chiefs. This office is conferred on an individual by the king for some roles performed or expected to be performed in the locality. This is more of “financial inducement” to the king today. This is not restricted to a family and the title cannot be inherited. This category of chiefs performs an advisory role to the king. The category of these chiefs is not on salary as the traditional chiefs.

Another traditional institution vested with power of dispensation of justice is the *Baalẹ* (the village head). Every village is headed by *Baalẹ* that performs judicial functions, along with his



chiefs. Their titles are associated with the village or community they oversee. *Baálẹ̀* as well has some chiefs as subjects who are sometimes delegated with judicial functions within their traditional power.

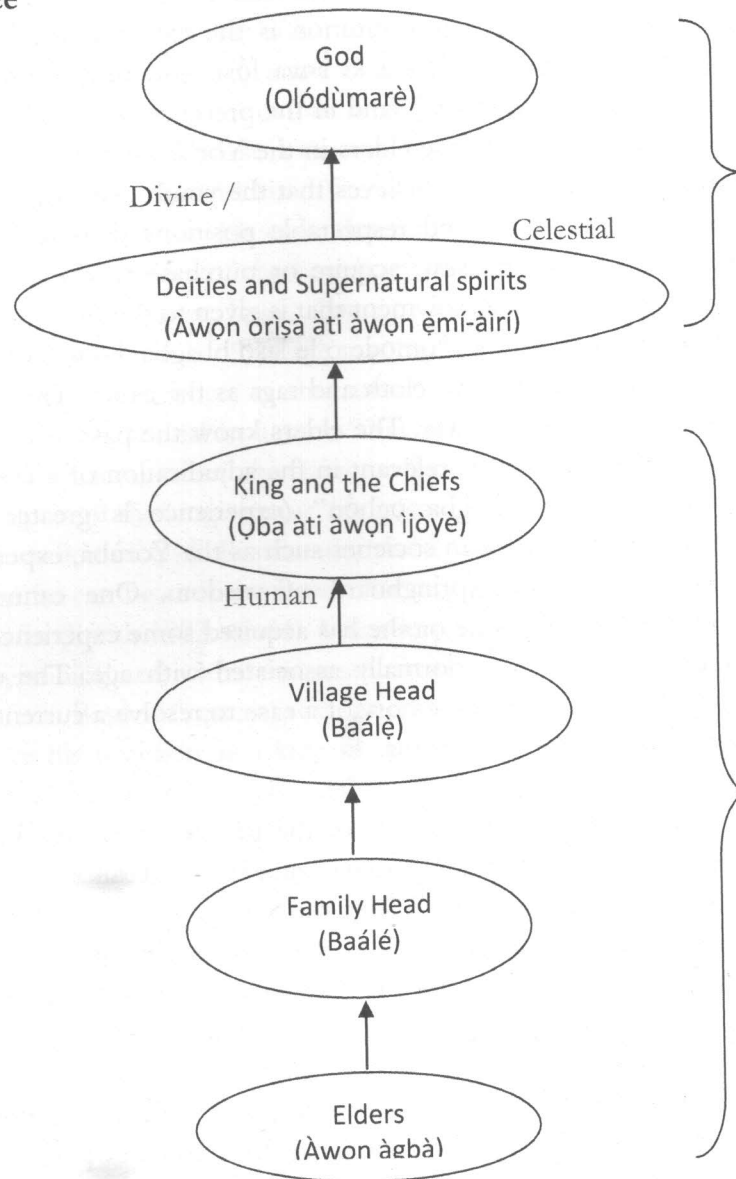
*Baálẹ̀* (family head) is also an important traditional institution in the administration of justice. His major role is to ensure peaceful co-existence among the family members. He operates under the control of *Baálẹ̀*. The last institution is the elders in the Yorùbá society. To the Yorùbá “àgbà kì í wà lójà, kórí ọmọ titun wọ”. (Things must not go out of hand in the presence of an elder). The pools or the wisdom of the elders in the Yorùbá society cannot be glossed over. The Yorùbá believes that the youth may be wealthier or occupy honourable and respectable positions than the elders, there is no way to possess, acquire or purchase wisdom like the elders. This is natural endowment that is given to the elders most of the time. To the Yorùbá, “ọmọdé ò lè láṣọ bí àgbà, kó tún lákúisà bí àgbà” (a child cannot have cloth and rags as the elder). This is also realized as a form of power. The elders know the past history, the memorial heritage that is relevant in the adjudication of a case. To the Yorùbás, “íríí ṣ’àgbà ọgbọ́n” (experience is greater than wisdom). In many African societies such as the Yorùbá, experience is considered as the springboard of wisdom. One cannot be considered wise unless he or she has acquired some experience, the experience of which is normally associated with age. The elders employ the past relevant memory of a case to resolve a current one. Şótundé (2009: 366) reports that:

Elders are the Custodian of the people’s heritage, the link between the Society and the *ọba*, and the joint rulers (with the *ọba*) of the Community to keep the Society going as a corporate entity, the rules and regulations put in place for the good of the public, by the authorities in the Society i.e. Elders have to be complied with.

To the Yorùbá “Ọrọ àgbà bí kò bá ṣe lówuúrọ, bó pẹ tíí á ṣe lójó alẹ” (words of elders will sooner or later come to pass). There is no way wrong judgment can be delivered with the presence of the

elders. In other words, there is rarely a report of miscarriage of justice with the presence of the elders in the society. The hierarchies of the Yorùbá memorial heritage of judicial institutions can be illustrated with the diagram propose below:

### Yorùbá Hierarchy of Memorial Heritage Institutions of Justice



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## Yorùbá Traditional Judicial Institutions and Powers as Memorial Heritage of safe justice

In Yorùbá society, a case is determined by the appropriate court with the power of jurisdiction to hear the case. The traditional institutions in the dispensation of justice are influenced by the traditional judicial power vested on such traditional court. To the Yorùbá, “ilé la ti n kẹ̀sòò ròde” (charity begins at home). The process of dispensation of justice starts from the family court *aganjú*, *gbòngàn-ìgbéjọ-ilé* or *ilé-ìgbéjọ* (open-family court). *Baálé* presides on this court, where some *baálé* of each *ẹ̀ẹ̀dẹ̀* or *íkàngun* (compound) are as well in attendance. This usually involves a case with two or more family members or between husband and the wife. There is decentralization of judicial function to each family in Yorùbá tradition. The oldest, knowledgeable and wise person occupies this position in a situation where such a family is not of the traditional chieftaincy, as explained earlier; otherwise, *Baálé* (the chief) of such family presides on this court. Fádípẹ̀ (1970: 224) reports that “owing to the partial decentralization of the judicial machinery among the Yorùbá, the administration of public justice may be said to begin at home, (according to the nature of the parties involved) and to end with the highest state tribunal as well as the highest court of appeal.” *Baálé*’s court is an appellate court; that is, parties involve in a case can seek redress in higher courts. The family roles or hierarchy of authority is highly respected in the adjudicating process. Settlement of open fight may involve settlement and appeal. If no party has been wounded, the matter ends there. If both disputants are of the same compound, the matter will be taken up by the *Baálé* (the family head); if another compound is involved the two *Baálé*’s serve as arbiters (if they are in good terms of relationship). The jurisdiction of this court can award fines or jail the accused in some cases, depending on the community. For instance, in Ògbómòṣò, Òyó state of Nigeria, *Baálé*’s court has a prison where the accuse serves jail term “*Baálé ní ilé ẹ̀wọ̀n tí à n pè ní Poolo. Níbẹ̀ ní a máa n fi àwọ̀n ẹ̀lẹ̀wọ̀n sí, á kó sẹ̀kẹ̀sẹ̀kẹ̀ sí wọ̀n lówọ̀ àti ẹ̀sẹ̀*” (family head has a prison cell referred



to as *Poolo*. There, the convicted persons are kept, fettered on feet and hands) (Agíri 1978: 100).

The next court is that of the village, presides over by the *Baalè* (The village head). The jurisdiction of this court covers civil and criminal cases. It is an appeal court because, family court is appealed at this court. Agíri (1978: 100) says "...*Şugbón ẹsẹ pàtàkì tí ó burú bí i kí á fólé, kí á sunlé, kí á pàniyàn àbí kí á huwà idalúru, ọdọ Baalè ni àwọn ẹjó wònyí n ló. Baalè àti àwọn ijòyè ilú ni yóò ẹ idájó*" (...but offences on criminal cases such as burglary, setting a house ablaze, murder, or causing civil unrest are referred to Baalè and his chiefs to arbitrate on). This means *Baalè's* court is a higher court. Fádípè (1970: 209) accounts that the court handles cases involving "criminal cases or what might be called indictable offences, unlawful murder, treason, burglary, arson, unlawful wounding, manslaughter, incest, witchcraft and sorcery and knowledge of women of the mystery of occult societies."

The final court of justice is headed by the king. According to Fádípè (1970: 209), "the judicial function of the council consisted of its being the highest court in the country as well as the final court of appeal..." on one hand. The king, on the other hand, is vested with the prerogative power to grant pardon. This court can hear cases appealed from lower courts (as explained earlier), and cases involving a village and the other, rift among the chiefs and so on. The court awards capital punishment fines and jail the convicted individual(s). "The *Alaáfin* was in his person, of course, the highest court of appeal" (Fádípè 1970: 235).

Besides these three categories of court, there can also be a special court of tribunal. This is specially composed by the *Oba* and his chiefs to handle specific cases. In such a tribunal, it may comprise some elders outside of the member of the council; even sometimes elderly women. For instance, case involving market women. *Ìyálójà* (head of market women) or *Bàbálájé* (head of market men) may be a key member in this type of tribunal. In this case, he or she acts in the capacity of a tribunal and not a regular court. In other words, such a tribunal reports its activities back to the *Oba* and his council. The tribunal recommends their findings to the council of *Oba*. This type of tribunal is temporary in nature as its

activities terminate after the conclusion of its judicial assignment. Besides, there is a standing tribunal in the Yorùbá judicial system as well. In other words, the tribunal is recognized by the tradition with cultural judicial functions. The composition of members is a "closed form", for instance, it is cultic (specifically for specialized group). This form of tribunal is vested with the power to fine, punish and sometimes pronounce capital judgment on the culprit. For example, if a case of murder is involved, the *Ògbóni* secret fraternity was to handle the matter. The body is the chief Administrative and judicial one; the composition and the names vary according to community. For instance, the tribunal is named *Èlúkú* (connected with the Oro-bull-roarer cult) cry was raised and the street cleared of women at once in order to give unhampered movement to officials of the *Ògbóni* not only in arresting the person who had committed the murder, but also in dealing promptly with any attempt to enforce private justice. The offender is apprehended, arrested and prosecuted. The *Ògbóni* is a powerful Yorùbá tribunal recognized and established by *Ifá*. For instance, *Èjù-Ogbe Mejì*, Abimbólá (1977b: 1 & 2) reminds us that, "*àwọn Ògbóni wá ní, Ta ni ó tánràn araa wọn*?" (The *Ògbóni* fraternity asked who is to be punished). The theft case between the Monkey and the farmer was taken to the *Ògbóni*: the Yorùbá judicial organ. Abimbólá (1977b: 99) reports that "*iwájú àwọn Ògbóni ni wọn mú ẹdun lẹ, nítorí pé, àwọn ni onídàájọ aye àtíjọ*" (*ẹdun* was taken before the *Ògbóni* who were the judicial organ in the ancient time). In another context, the *ògbóni* cult oversees the maintenance of peace, social and political order of the society; especially, among the *Ègbá* and *Ìjẹbú*, Ògùn state of Nigeria. ÒgúnṢínà (1992: 59) claims that the *Ògbóni* "was more powerful among the *Ègbá* and *Ìjẹbú*...It performed all state functions including taking positive actions against any threat to the social and political order." Whatever the court status is, the judge or judges must be knowledgeable, wise, experienced in age and in the tradition of the Yorùbá. This is why not just anybody can be a judge (Àtandá 1980). Ṣótundé (2009: 366) notes that "in most case, the superiority of brain over brawn has been demonstrated". To the Yorùbás, "*ogbón ju agbára ló*" (wisdom is more than power), and that "*agbà ò kògbón*" (being old does not mean being wise). These

bodies are responsible for the intangible heritage particularly memorial heritage as they serve as pillars of memory that guarantee democracy, peace and justice in Yorùbá tradition.

### Memorial Heritage of Suit-filling, Hearing, Judgment and Execution of Judgment

#### *Case Filling*

After the determination of the court jurisdiction has been determined, the complainant files his or her case in the appropriate court. "The complainant usually spoke twice, but in some communities either party could speak more than once. In all communities, cross-examination of opponent and his witnesses was allowed." (Fádípè 1970: 232). This stage is referred to as *ìfẹ́jọ̀sùn* (lodging of a case). The appropriate court official then constitutes a team to hear the case. In civil cases, the defendants pay hearing fee with the same amount with the complainant (plaintiff). A lots of financial and materials investment accompany judicial memorial heritage. This is why the Yorùbá are reminded that "*ẹ́jọ̀ n fówó...*" (Case demands for money). In another context, "*O fọ̀ kẹ̀ngbẹ̀ tán, O kọ̀rì s'Ọ̀yọ̀ọ̀ lọ gbóníṣẹ̀ ọba wá, owó oníṣẹ̀ Babalààfin ẹgbàajọ, owó irinsẹ̀ ẹgbàaafa, bọ̀sìhìn o wí tìrẹ ẹgbẹ̀rindínlogún, kí ẹ́jọ̀ tó parí owó lọ rẹ̀rẹ̀rẹ̀*" (You went to bring the king's servant after you have broken a calabash container, the financial charges of the king's servant is One Thousand, Six-hundred Thousand Naira, the transport fees is One Thousand, Two hundred Naira, come forward to present your case involves sixteen Thousand, before the case ends debt has accumulated) (Ọ̀kẹ̀wándé 2013: 33). This is why everyone runs away from case that ends in a formal judicial institution. According to Fádípè (1970: 233), "All this revenue, including the hearing fee and the summon fee, was divided up among the judges, the lion's share falling to the king."

The Yorùbás believe in presentation and explanation of a case than to fight; thus the Yorùbá will say "*ẹ́jọ̀ là á kọ̀ ẹ̀nikan kì í kọ̀jà; nítòrí, bí a bá jà tán wọ̀n á ní ká rojọ̀.*" (Learning to present and explain oneself is better than to fight; for if after fighting, explanation of oneself will be necessary). To the Yorùbás, "*jà ọ̀*

dola” (There is no gain in fighting). Whichever the court that hears a case, the proceedings is the same. ‘Pacifism’ aspect of philosophy is relevant here. Crofton (2000: 149) reports that is the “belief that VIOLENCE even in self-defence is unjustifiable under any condition and that arbitration is preferable to WAR as a means of solving disputes.” There is no way to live together without a fight since tongue and mouth do fight together. What is “evil” is, not to allow for peace to reign and the impossibility for further and continuous peaceful co-existence of the individual(s) involved in a case. “Agbè má jà kan ò sí, a jà má rẹ ẹ ni kò dára” (No one lives with another without a fight, what is bad is not to allow for friendly living after the quarrel). Every possible effort is made to “quench the fire” of a quarrel or fight before it snowball to court case. The Yorùbá believes that, ‘a fight’, ‘misunderstanding’ or a ‘quarrel’ should not be left unresolved immediately. “Bí ọrọ bá pẹ nílẹ, a máa gbón ju ni lọ” (if a case last longer, it becomes a critical case to resolve). The Yorùbás believe that, misunderstanding should be resolved immediately as one can know the beginning of a case without knowing the end. This is why Yorùbá don’t entertain a court case, except when all preliminary efforts at resolving the rift at initial stage proofs abortive. The Yorùbá prefers that prevention is better than cure, “àtẹbi ati àrẹ, Ọlórún mọ jẹ ká rẹjọ” (God should prevent us from either justified or convicted case). They believe that, “a kì í ti kóótù bò ká Ẹ̀rẹ̀” (We can’t be friends while coming from the court). The *ẹ̀sẹ-Ifá Ìròsùn Èlérin*, Ọ̀dẹ̀gbọ́lá (2014: 242) discourages any form of fight or misunderstanding. The *Ifá* corpus claims that:

Ọ̀rúnmilà ní kí á mọ jà ló dùn  
 Ifá mo ní kí á mọ jà ló dùn Bara Àgbọ̀n m̀rẹ̀gún.  
 Ifá ní tí a bá jà, inú kì í dùn mọ.../  
 Ọ̀rúnmilà says what is preferable is that we should not fight  
 Ifá, the father of Àgbọ̀n m̀rẹ̀gún, I says preferably we should  
 not fight.  
 Ifá says should we fight, we will be unhappy.



The Yorùbá believes as well that “bí a bá já tí a tún rẹ, eré ò lè bí eré àpilẹ̀ṣe mọ” (If we fight and be friendly again the tempo of the friendship can no longer be maintained). To this effect, Yorùbá encourages *ìwàpẹ̀lẹ̀* (good character) in whatever they do. A well behaved individual is regarded as *omolúabí* (well-mannered individual). This virtue guides the individual’s behaviours in the society Abimbólá (1975: 389-420). To the Yorùbás, “ẹni tí a bá pè ní FọlórúnṢọ kò gbọdò fókùn ọ̀gèdè gun ọ̀pẹ” (whoever’s is FọlórúnṢọ (literally means in God’s care) must not climb a palm-tree with a banana’s rope). The *Ifá* corpus *Ìwòrì* fore-warned and reminds the Yorùbá that:

Ìwòrì tẹ́jú mọ́hun tí nṣeni  
 Awo má fẹ́já igbà gun ọ̀pẹ  
 Mọ pẹ nìtorí pẹ o ti ṣawo ko tó figbà tó ti já tán gun ọ̀pẹ  
 Ìwòrì tẹ́jú mọ́hun tó nṣeni  
 Awo mọ fìbínú yòbẹ  
 Ijà kí í dé kòrò gún ra wọn káwo wọlé yòbẹ  
 Ìwòrì tẹ́jú mọ́hun tó nṣeni  
 Awo jìnnà séjò tá à bẹ lóri  
 Awo kí í léjò  
 Ìwòrì wá tẹ́jú mọ́hun tí nṣeni  
 Káwo mọ sán bantẹ awo.../

*Ìwòrì* mind your own business  
*Awo* don’t climb palm-three with partially cut rope  
 Don’t say you are somebody and be committing unlawful acts

*Ìwòrì* mind your own business  
*Awo* don’t draw out a knife while temperamental  
 Don’t because of a little misunderstanding draw out a knife  
*Ìwòrì* mind your own business

*Awo*, be far from a snake with head uncut

*Awo* do not run after a snake

*Ìwòrì* come and mind your own business

Let not *Awo* put on a wrapper of another person... (Àládé 1978: 17).

An *omoluabi* (well behaved individual), metaphorically referred to as *Awo* in the above *Ifá* corpus, will distance himself or herself from doing something unjust or immoral and will be far from being temperamental, be tolerant, flee evil and not trespassing by doing things unlawful. By so doing, the society will be in peace. In another context, the virtue of *omoluabi* is based on the respect for the elders. This may be realized as respect for the senior in the society. Disrespect for the elders create disharmony and rancour in the society, the Yorúbás believe that “*àifàgbà fẹ̀nikan ni ò jáyé ó gún*” (disrespect for someone a senior creates disharmony in the society).

### **The Yorúbá intangible heritage and memory of safe justice: Court proceedings**

During the period of court proceedings, the accused are always in a sober mood and must show remorse. The accused may be on his or her knees or by prostrating. This is why the Yorúbás say that “*ẹ̀lẹ́jọ̀ kì í mejọ̀ ẹ̀ lẹ́bí kó pé lórí ìkúnlẹ̀*” (An accused that admit being guilty will not stay long on his or her knees). There are other body postures that must be portrayed by the accused. Postures such as *ìtẹ̀rìbà* (bowing down), *ìkàwọ̀pọ̀nyìn* (folding back of harms), *wíwólẹ̀* (looking down) and so on.

There are traditional established memorial heritage of ensuring safe judgment. Any judgment that fails to recognize these principles render the judgment null and void, that is, of no effect. Some, but not limited to these are:

- (i) The principle of being under the law of tradition. For instance, you cannot be a judge (presiding) over your own case otherwise known as *nemos judex in causa sua* in modern legal term.
- (ii) Principle of fair hearing (hear from the other party), otherwise known as *audi alteram partem* in modern legal term.
- (iii) Witnessing
  - (a) Swearing/oath taking
  - (b) *Èpẹ̀* (curse)

Case 1 is the superiority of the laws. The tradition put everyone under its ambits. In judicial matters, nobody is above the tradition. From *oba* down to the elder, no one is allowed to preside on the case that he is involved. For, “*òbẹ kì í mú kó gbẹ èèkù ara rẹ*” (no knife is sharpened to carve its own handle). In other words, the higher authority presides on the adjudication matter even if it involves *oba*, the king makers or the deities are involved in pronouncing verdict. In the modern system, it is recognized as *nemos judex in causa sua* (you cannot be a judge in your own court). The Yorùbás believe that “*òlògbòn kan ò tẹra ẹ nífá rí, bẹẹ ni òmòràn kò lẹ fira ẹ joyẹ*” (There is no *Ifá* priest that ever initiates himself, just as no knowledgeable person coronate himself). Adéoyè (1972: 115-6) opines that “*ohun tí ó tilẹ burú nínú ọ̀ràn yí nípé ọ̀bẹ kì í mú kí ó gbẹ èèkù ara rẹ, darandaran d’ọ̀bẹ tí ó mú, ó sì tí gbẹ èèkù ara rẹ, nítoripé oun nìkan l’órojọ láisì jẹ kí ẹni tí ó ti olẹ mọ sọ̀rọ...*” (The worst of the matter is that no knife is sharpened to carve its own handle, the Shepherd became a knife that sharpened its own handle because he didn’t give room for the one that alleges him of stealing). In this case, the shepherd behaved contrary to the tradition by justifying himself in a case that involved him, hence, he was sentenced to death.

Case 2 is the principle of “*agbẹ́jọ ẹ̀nikadà àgbà ọ̀sìkà*” (the one that judges without hearing from both parties involve in the matter is a chief of wicked). In the modern legal language, *it is audi alterem partem*. In other words, Olúyédé (1988: 470) says “the concept of fair hearing must be considered not only from the angle of the accused but also from the angle of society at large and the victim of the crime” This principle is so important to the extent that it is entrenched into the national constitution of Nigeria. The Yorùbá philosophy as well as *Ifá* is emphatic on this principle towards ensuring a safe judgment. For instance, in *Ìwòrì Mejì*, Akíntọ́lá (1999: 188) claims:

Anìkàn dájọ́, oò Şeun,  
Anìkàn dájọ́, oò Şeeyàn;  
Nígba tí o ọ̀ gbọ́ tẹnu ẹ̀nikẹ̀jì,  
Emi l’o dájọ́ Şe?

A díá fún Ọ̀rúnmílà,  
 Èyí tí akápò rẹ̀ ó pè lẹ́jọ̀ lẹ́dò Olódùmarè  
 Olódùmarè á ràn<sup>sé</sup> sí Ọ̀rúnmílà  
 Pé kí ó wá sọ̀ ìdí nàà  
 Tí kòfi gbé akápò rẹ̀  
 Nígba tí Ọ̀rúnmílà dé iwájú Olódùmarè  
 Ó ní oun sa gbogbo agbára oun fún akápò.  
 Ó ní ìpín akápò ní kò gbà  
 Nígba nàà ní ọ̀rọ̀ nàà  
 Tó wá yé Olódùmarè yéké-yéké  
 Inúu rẹ̀ sì dùn wípé  
 Ọ̀un kò dá ẹ́jọ̀ ẹ̀kún kan  
 Ní ẹ̀lẹ̀dàá bá ní látọ́jọ̀ nàà lọ  
 ọ̀mọ ẹ̀dà kan  
 kò gbọ̀dọ̀ dá ẹ́jọ̀ ẹ̀kún kan;/

Whoever judges by hearing from one side has done wrong  
 whoever judges by hearing from one side is inhuman  
 when you have not heard from the other party  
 why did you judge?

Cast divination for Ọ̀rúnmílà  
 That his treasurer will sue  
 To the court of the Olódùmarè  
 Olódùmarè then sent for Ọ̀rúnmílà  
 That he should defend himself  
 Why he fails to favour his treasurer  
 When Ọ̀rúnmílà got to the presence of Olódùmarè  
 He says he did all that he could do for the treasurer  
 He says it is the treasurer that rejected his shares  
 It was thereafter  
 That the matter became clear to Olódùmarè  
 He was happy that  
 He did not judge by hearing from one party involved in the

case

Then the creator says from that day  
 no creature



Must judge a case without hearing from the parties involved in a case.

From this *Ifá* corpus, *Olódumare* corrected the error of miscarriage of justice committed by *Ọrúnmilà* and *Olódumare* set a precept for this principle of African memorial heritage of fair hearing in the attainment of safe judgment. In another context, *Ọgúnda Méjì* supports this as reported by. Abimbólá (1967: 125):

Ni Ọgún bá fibá wọn níbẹ̀  
Ó bí wọn lẹ́jọ̀  
Wọn rò fún un.../  
There Ọgún met them  
He asked them to present their case  
They expressed themselves to him...

The third party must be an arbiter on matters of misunderstanding between two or more individuals. To the Yorúbás, “àísí ẹ̀nikẹ́ta lẹ́yàn méjì n jàjàkú akátá” (In the absence of the third person makes two persons fight tired). It is the duty of every elderly Yorúbá person to mediate between two or more people involved a misunderstanding or a physical fight. If it is physical fight, effort is made to separate them and if it is impossible, some people who are more “powerful” are mobilized to mediate. This is why “the actual settlement of such a dispute very rarely, in the pre-colonial days, got to the notice of the authorities unless some serious physical injuries had been inflicted” (Fádípẹ̀ 1970: 224). This is an application of mediation in retributive justice. In this case, the aim is to intervene and arbitrate in quarrels and misunderstanding. This is different from restorative justice, which is justice that seeks to put the injured party back to the position he or she was before the act or omission he complained of. If on the other hand, the reparatory justice is adopted, the case undergo memorial due process of justice whereby compensation, damages and fines are awarded as the case demands.

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### *Witnessing*

In order to ensure justice, the roles of witnesses cannot be overemphasized. The Yorùbá believe that “bí Ọlórún bá rí ọ, jẹ kí ènìyàn nàà rí ọ” (if God sees you, let human beings see you as well). In other words, it is a means of ensuring a safe justice. There are memorial heritage of rules that protects a witness from being intimidated, harassed or threatened while divulging information that can help in securing justice. For instance, “Bí ẹnikan bá n dá àiyà já ẹni tí yíò wá jẹrì ní ibi ẹjọ kan, tàbí tí ó n dí i lówọ láti wá jẹrì nwọn lẹ fi Olúwa rẹ sí ìtímọlẹ bí olúwa bá sì ni ẹjọ nàà nwọn kì yíò dá a láre” (if anybody threaten a witness to a case or is interfering through him or her to influence the court proceedings, the person can be jailed, and may not be vindicated) (Ọ̀gúnbòwálẹ̀ 1966: 47). A witness must be able to account for what he or she saw in connection to the case. According to *Ọfún Méjì* (Àjànàkú 1978: 1-11):

Ọ̀rúnmilà ní ọ̀rọ̀ hù  
Ifá ní ọ̀rọ̀ hù  
Baba Àgbọnnirẹ̀gún,  
Ó ní bí ọ̀rọ̀ bá hu,  
**Ó ní ojuu ta ló ẹ̀?**  
ọ̀mọ eku bọ síbẹ̀, ó ní ojú Ọ̀n ló ẹ̀  
ó ní bọ̀rọ̀ bá hu nkọ̀, ó ní bó bá hu kan,  
ó ní wọn a tẹkan, ó ní bó bá hu méjì,  
ó ní wọn a tẹ méjì  
**Àwọn àgbàgbà ní irọ̀ ló pa, èké ló ẹ̀**  
**Wọn pa á, wọn darí rẹ sá pò àmìnìjà ẹ̀kùn**  
ọ̀mọ ẹja nàà fò síbẹ̀,  
ó ní ojú Ọ̀n ló ẹ̀  
bẹ̀ẹ̀ lọmọ ẹye, ọ̀mọ ẹran.  
Gbogbo wọn ni wọn fò síbẹ̀,  
Tí wọn ní ojú wọn ló ẹ̀  
Wọn ní bó bá hu nkọ̀?  
Wọn ní bó bá hu méjì,  
Wọn ní wọn a tẹjì  
Wọn ní bó bá hùkan,  
Wọn ní wọn a tẹkan

**Wón ní iró ni wón pa,**  
**Wón bá darí wón sí àpò àmìnìjà èkùn**  
 ọmọ erin wá fò síbẹ̀, ó ní ojú ọ̀n ló ẹ̀  
 wón ní bí ọ̀rò bá hu nkọ?  
 Ó ní bó bá hùkan ọ̀n a tèjì  
 Ó ní bó bá hu méjì ọ̀n a tẹ̀kan  
**Ọ̀rúnmilà ní “O ẹ̀un, ẹ̀un, ẹ̀un!” /**

*Ọ̀rúnmilà* says word manifests

*Ifá* says word manifests

Father of *Àgbọ̀nìrẹ̀gún*,

He says if the word manifests

**He says in whose presence was it?**

**A rat came forward and says it was there**

He says that if then word manifest, it says if it manifests one,

It says they will print one, it says if it manifests two,

It says they will mark two strokes

The elders said it is a lie, it is malicious

It was sentenced to death..

Fish also came forward

that it was in its presence.

So did a bird, and animals

**They all came forward**

**They proved that it was in their presence**

They said if it then manifests

They said if it manifests two,

They said they will print two strokes

They said it manifests one,

They said they will print one stroke.

They said they have all told a lie,

They were all sentenced to death.

**An Elephant then came forward to prove that it was in its presence**

They said if the word manifests

It says if it manifests one, then it will mark two strokes

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It says if manifests two, then it will mark one stroke.  
Òrúnmìlàn says “thank you, thank you, thank you!”

From the above *Ifá* corpus, the rat, bird and other animals testified to have witnessed the *Ifá* marking process which is contrary to the actual manifestation, recognition, reading and markings of the *Ifá* divination symbols. But an Elephant testified the real *Ifá* divination symbols marking. For instance, the true situation of *Ifá* symbol marking is “If two palm-nuts remain in his palm, he makes one vertical mark on the powder of the divination. If one palm-nut remains, he makes two marks below the first mark” (Abimbólá 1977a: 5). This gives the true account of *Ifá* symbols marking as testified by an Elephant in the *Ifá* corpus above. Elephant was commended for testifying the truth of the situation while those that testified before it (rat, bird and other animals) were sentenced to death (as highlighted from the corpus). This shows that falsification and perjury can lead to capital punishment under the memorial heritage of safe justice as witnessed from the *Ifá* corpus. The Yorúbás believe that you should report whatever you saw. The Yorúbás frown at *àbeso* (rumours mongering), *agbóso* (second-hand information), *aròso* (fiction) and *ìlérò* (assumption) as bases of information to testify to a case during memorial court proceeding.

### *Swearing and Oath-taking*

This is one of the actions taken so as to achieve a balanced judgment and to realize a safe and peaceful society. Witnesses are not left out to undergo swearing and oath taking, so as to base their judgment on evidence on fact. In Yorùbá tradition, there can be two forms of swearing: heavy and light. In the light form, it always occurs between one or more individuals so as to believe each other on a matter. This may also occur between a buyer and a seller in regards to a market or financial misunderstanding or mistrust. This form of swearing is unreliable or not dependable one in judgment (Moréniké 2015). On the other hand, the heavy form of swearing is employed during the memorial hearing process. No one will ever joke or take this form of swearing for granted. “Ó jẹ̀ ìbúra tó lẹ̀wu” (It is a dangerous form of oath) (Ládélé et al 1976: 75). The type of



swearing depends on the case involved. For example, it relates to business matter, especially, monetary issue, coin may be put inside water for the people involved in financial misunderstanding to drink. It may take a form of swearing by the land, if the matter relates to land issue or on critical cases. Land is a god in Yorùbá religion. Whoever swears contrary to the truth by land will surely bears the brunt, which may sometimes cost his or her life. The Yorùbá believes that “*ẹni tó bá dǎlẹ̀ yó bálẹ̀ lẹ̀*” (whoever betrays land will go with the land: be buried under the ground). Some religion objects or symbols are used to swear by the parties involved in a case. For example, iron object represents *Ògún* (the god of iron). If the parties involving in a case belong to the same religion, the *awòrò ọ̀rìṣà* (priest) of such a religion may be required to perform the oath or swearing for the parties involved. This is referred to as *ìbúra ọ̀lórìṣà* (swearing of god's worshippers). Whoever swears in “bad faith” is avenged by the god. If the *Ifá* worshippers are involved, *ìgbá ọ̀dù ṢìṢì* (removing the cover of ọ̀dù pot) is used as object of swearing. This type of swearing is rarely employed as its negative repercussion is catastrophic. If the dead person is involved in a matter, *ìlẹ̀pa* (the sand particles of where the coffin rests) may be put in the water for the disputants to drink. In some cases, if the situation that surrounds the death of someone is controversial, the family may want justice, by wanting to avenge the death by *ríró ọ̀kú* (performing cultic rites of retaliation on the corpse). The outcome of this type of swearing is instant without making any mistake. It is observed that some of these forms of swearing are realized in form of judgment, especially, the forms of swearing that are religious in nature, as it involves and invokes the power and the spirit of the supernatural beings. The involvement of the supernatural forces in the maintenance of peace, order, and justice among the Yorùbá cannot be underrated. For example, *Ifá* oracle plays an important role in finding out the truth behind any hidden matter.

### *Èpè (curse)*

This is a form of cultic verbal act. It belongs to the Yorùbá incantation class, as its efficacy is not negotiable. *Ọfọ̀* (incantation) is “a restricted poetic form, cultic and mythical in its expectation”

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(Olatunji 1984: 139). In some cases, *ofo* is regarded as “the restricted poems due to their cultic, mystical and fearful attributes” (Alex 1992: 46). *Èpè* (curse), on the other hand, possesses all the attributes of *ofo* (incantation) as it also have mythical, fearful and cultic attributes. The only difference between them is that while *ofo* is mostly realized in poetic form *èpè* may take the poetic or prose form.

Swearing/oath and curse resembles to some extent, but different in few aspects. For example, you can curse an individual but, you cannot swear by an individual except by God, the Almighty. Furthermore, a curse is “cultic” which everybody in the Yorùbá society is careful to play with; but, swear/oath may be for a protective matter. In other words, many of us are involved in oath making in one way or the other, for example, the politicians taken an oath of office.

To the Yorùbá, “*ogun ló má a n̄ Ṣini mú, èpè kì í Ṣini jà*” (It is war that mistakenly put one on captives, curse does not work by mistake). For instance, the Yorùbá believes that “*èpè n̄i polè*” (curse kills a thief). *Èpè* (curse) is employed by the elders in a critical situation, as in this case, arbitration or judgment. Children are restricted from invoking a curse; as the Yorùbá people believe that verbal act cannot go without its positive or negative roles. There different types of curse such as *èpè aláṣòbì* (curse of family), *èpè ilú* (curse of town), *èpè ọ̀wò* (curse of business), *èpè ẹ̀sìn* (curse of religion) and so on.

### Memorial heritage of judgment and execution of judgment

Memory is a heritage expressed through historical recounts, songs, proverbs, idioms, riddles, folk-tales, legends myths among other “traditional” medium of expressions. These are beliefs and practices which have been preserved and handed down by words of mouth from generation to generation. The interpretation and understanding of memory enables one to know the beliefs and practices of the people which are described as “living and active” (Amponsah 1977: 9). Abimbóla (1975: 417) succinctly put it that “The Yorùbá concept of existence transcends the time when the

individual is on the earth. It goes beyond that period and includes the memories which a man leaves behind after his death"

The Yorùbá people employ memorial knowledge in the implementation of judgment. After presentation of cases by the complainants, witnesses, completion of investigations and establishment of facts and evidence have been completed, pronouncement of judgment follows. Overview of the hearing process is presented by the chief judge on the matter. The opinion of the associates judges is sought, "beginning with the most junior (only in Ọyọ does the senior member of the tribunal speak before the junior) (Fádípè 1970: 232). The memory of this is brought to the lime light by (Adéoyè 1972: 113) that "kí nwọn tó nanu mú ètò àtí dájọ́, ìkò yí kòkò rán wọn létí ohun tí ó *ṣelẹ̀* níbi tí nwọn gbé wòran ní gbògàn ÒrìṢànlá, ní ìbùgbé ẹ̀san Àrẹ̀mọ̀ Olódumare" (before the proceeding to the judgment, this team first reminded them of what happened where they observed at the hearing hall of ÒrìṢànlá, the abode of the first son of Olódumare). This is an established memorial heritage of safe justice. ÒrìṢànlá is a Yorùbá god in charge of creation. It is referred to as *Ọbatálá*. The *Ifá* priest says he acts as personal assistant to *Olódumare* in the process of creation (Adéoyè 1985).

The memorial heritage of justice says that one must have judicial capacity or jurisdiction to act as a judge and must act within the jurisdiction capacity being guided by the memory. This means that memory is the qualification needed for one to become a judge in traditional Yorùbá society. Every judgment shall undergo re-examination by the Almighty judge (God), who is an incorruptible judge of the whole world for "ọba ayé kì í rí amòòkùn jalẹ̀, Ṣugbón, ẹ̀lẹ̀dàá a máa rí i. Ẹ̀lẹ̀dàá náà ló sì lẹ̀ Ṣẹ̀dájọ́ afeyíngéran" (the king of the world cannot see a thief in the dark, but, the creator sees him or her. And it is only the creator that can judge the one that divides meat by teeth) (Adéoyè 1972: 118). Every case judged by the worldly judges will be revisited by *Olódumare*. This should be in the memory of any mediator or judge. "Olúwa ló mejọ́ da" (God is an incorruptible judge). Adéoyè (1972: 118) reports that:

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## Conclusion

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ẹjọ tí nwọn bá dá l'áiyé yíò jẹ àtúndá l'òrun, bí nwọn  
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 tí nwọ ẹ. Elẹsẹ kì í lọ láìjìyà. Nítorí náà, ẹdà tí ó bá  
 dá ẹjọ idakudá d'elẹsẹ yíò sì jìyà ẹsẹ rẹ.../  
 the judgment of this world shall be revisited in heaven,  
 and if there is a miscarriage of justice, they committed  
 sins for acting outside their limit of power. A sinner does  
 not go unpunished. Therefore, any human being that  
 misjudged a case commits sin and will surely be punished  
 for sins committed.

To this effect, the corpus above explains that, the memorial  
 justice is not terminal. The terminal judgment is delivered by God.  
 This statement is metaphorical, because, the world is referred to as  
 market. To the Yorùbá "ayé lọjà, ọrun nilé" (The world is a market,  
 heaven is home). In other words, this world is a temporary place  
 while heaven is a permanent place.

The implementation of judgment must be seen to be carried  
 out. This depends on the degree of the punishment. For instance, if  
 fine is awarded, it must be paid within the prescribed period by the  
 judgment. If the convict is to serve a jail term it has to be carried  
 out accordingly as well. The nobles, chiefs and important  
 personalities in the society are not as well exempted in this form of  
 punishment. The punishment may be through beating, if the  
 offence committed is "light". The convict may be sentenced to  
 exile. In this case, his continuous stay in the community cannot  
 guarantee a societal peace. If *ọba* is convicted, he may be asked to  
 commit "self-suicide" this is done by opening the *igbá iwà* (sacred  
 calabash) which is forbidden to do by any king and be alive.

### Conclusion

This chapter has critically examined intangible heritage as  
 fountain of memory, peace and justice in Africa with reference to  
*Ifá* in Nigeria. The chapter examines the roles of traditional  
 institutions, power and limitations in the dispensation of justice.  
 The power of *Olódumare* (the Almighty God) is at the elms of affairs



with unlimited judicial power; while the gods and the supernatural spirits, kings, village heads, family heads and elders are entrenched with limited power of memorial justice. This work further examines the Yorùbá traditional institutions and its power of jurisdictions in ensuring memorial safe justice. On one hand, the court of *Olódùmarè* (God's court) is celestial, natural and not appealable. On the other hand, the court of the king is a supreme court. This is a terrestrial non-appealable court of the Yorùbá land. The courts of *Baálè* (village head) and *Baálé* (family head) are appellate courts. The Yorùbá traditional procedures of securing memorial safe justice such as supremacy of the traditional rules, customs and norms, not presiding as a judge on a case involving an individual, hearing from both parties involving in a case before judgment, input of witnesses, oath-taking and curse toward ensuring memorial safe judgment are examined.

The chapter makes a critical argument that Africans, in their many cultures across the continent, have a dependable and reliable ways of guaranteeing safe justice. The memorial heritage guarantees peace and safe justice that equally put every individual under the ambit of controls in order to ensure peaceful co-existence among Africans. In other words, nobody is above the societal judicial and natural controls. It is equally observed that, there are codes that regulate activities of individuals and groups in the society which have stood the test of time. And, the Africans memorial heritage of safe justice is relevant input in the modern judicial system.

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