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TRADITIONAL CULTURAL EXPRESSIONS AND GENETIC  
RESOURCES”**

**LOST IN TRANSITION? TRADITIONAL HEALERS OF SOUTH EAST NIGERIA AND  
THE DELEGITIMIZATION OF TRADITIONAL KNOWLEDGE AND CULTURAL  
EXPRESSIONS IN THE AGE OF MODERNITY**

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## INTRODUCTION AND OVERVIEW

In the past decade, traditional knowledge systems, (hereafter TK systems) and forms of Cultural Expressions (hereafter CE) have witnessed a belated renaissance, both in policy instruments of some international intellectual property organizations<sup>1</sup> and in some global international law agreements.<sup>2</sup> This is a welcome departure when indigenous peoples and millions of colonized peoples and cultures were regarded as sub-human and inferior species. In the gradual emergence of TK systems and CE from their status of humiliation and denigration to that of tolerance and grudging respect, concerns have been expressed on how best to protect TK and CE from corrosive and adverse influences and structures. This paper attempts to highlight some of the prevailing cultural and institutional challenges that impede and would possibly frustrate the redemption of TK and CE from the shackles of neo-colonial bondage.

It is necessary, at this stage, to define the concept of traditional knowledge of the medicinal uses of plants, in distinction from the broader concept of TK.<sup>3</sup> The concept of traditional knowledge of the medicinal uses of plants, pertains specifically to the diverse knowledge possessed by the relevant healers of the various medical uses or properties possessed by certain parts of certain plants. Such knowledge differentiates other uses and properties of such plants, such as food, as distinct from the plants' medicinal efficacy. As distinguished from other types or frameworks of knowledge, especially, Western epistemology, TK is a broad, generalized differentiation of the divergent conceptualizations of ways of seeking knowledge adopted and practiced by different cultures.<sup>4</sup> It is not a purist categorization but a convenient tool of analysis premised on anthropological studies, cultural differences, and power relations between the colonizing and the colonized.<sup>5</sup>

Consequently, the concept of TK is better understood within the context of colonialism and the irruption and truncation of the natural development of pre-colonial epistemological frameworks. In this framework, the attempt to use Western empiricism as the measuring rod for TK may be construed as a continuation of the colonial entrapment and marginalization of colonized cultures and peoples. Hence, the concept of TK is part of the legal and socio-cultural claims of indigenous peoples to shared equality, dignity, and respect with other peoples across the world. As knowledge systems are in flux, it also follows that the distinction between indigenous knowledge and Western scientific knowledge would implicate elements of innovation and modernity.

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<sup>1</sup> *Draft Report of the World Intellectual Property Organization (WIPO) Fact Finding Missions on Intellectual Property and Traditional Knowledge* (1998-1999) Geneva, Switzerland, at 28. Hereinafter, *WIPO Report*.

<sup>2</sup> *Convention on Biological Diversity*, done at Rio de Janeiro on 5 June 1992, entered into force 29 December 1993, reprinted in 31 I.L.M. 818 (1992).

<sup>3</sup> On indigenous peoples, see *The International Labour Organization Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries*, 7 June 1989, reprinted in 28 I.L.M. 1382; *Commission on Human Rights, Preliminary Report on the Study of the Problem of Discrimination Against Indigenous Populations*, UN Doc. E/CN.4/sub.2/L.566 [1972]; *Chapter 2 paragraph 34, UN Declaration of the Rights of Indigenous Peoples*, UN. Doc. E/CN.4/1993/2, reprinted in 34 I.L.M. 541 (1995); Rudiger Wolfrum, "The Protection of Indigenous Peoples in International Law" (1999) 59 *Zaorv Heidelberg Journal of International Law* 369.

<sup>4</sup> E. Hunn, "What is Traditional Knowledge?" in N. Williams & G. Barnes, eds., *Traditional Ecological Knowledge: Wisdom for Sustainable Development* (Canberra: ANU, 1993)

<sup>5</sup> For an attempt to differentiate Western empiricism and indigenous peoples' knowledge see Martha Johnson, ed., *Love: Capturing Traditional Ecological Knowledge* (Ottawa, 1990)

Thus, TK systems and forms of CE traverse a wide gamut of life, historical evolution, epistemologies and empiricisms of thousands of disparate cultures across the face of the earth. TK systems and CE are implicated in ecology, agronomy, agriculture, medicine, animal husbandry, music, story-telling, cloth-weaving, et cetera across several thousands of different cultures and peoples. Given the complexity and multitudinous nature and diversity of TK systems and forms of CE, it becomes intellectually risky, indeed fraudulent for general claims to be made regarding the nature of TK systems and forms of CE. TK systems and forms of CE cannot be construed as a monolith; they are different, nuanced and more complicated than they are usually given credit for.

Thus, for the sake of analytical tidiness and intellectual candour, I limit my analysis and comments to the challenges confronting TK and CE to a specific type of TK, namely, traditional knowledge systems on the uses of plants for medicine among an identifiable indigenous group of people in South East Nigeria. Indeed, my analysis is further limited to the narrower issue of the protocols, norms and practices regulating the acquisition, use, transfer, and alienation of such knowledge among the indigenous healers (herbalists, in particular) of Ngwaland in South East Nigeria and more importantly, how those protocols fare in a modern world grappling with the after-shocks and trauma of colonialism. Of course, extrapolations to other cultures and peoples with similar historical and contemporary challenges may be made but the reader is warned beforehand not to over-interpret the pertinence of this analysis to such other peoples and cultures.

The issues that this paper seeks to highlight are the nature of TK and CE among the Ngwa people; the misappropriation and misuse of such knowledge and how the communities have sought to deal with the challenges thrown up by a multi-pronged socio-cultural and global phenomena, namely, fundamentalist religious denunciation of TK and CE coupled with an aggressive globalizing patent system. On the former, since the advent of Christianity in South East Nigeria, the traditional healer has become an object of fear and ignominy in daylight (although they are often patronized in the night by their detractors). With particular reference to the latter, misappropriation of TK in the two decades has implicated some foreign researchers, bioprospectors and other entities actively scouring indigenous peoples' cornucopia for the next miracle drugs.<sup>6</sup> Aiding and in some cases abetting this process has been an aggressive patent regime.

The paper is divided into four parts including the introduction. Although it is arguable that there is a trend towards the romanticisation of TK<sup>7</sup>, it is significant that this development is a product of social ferment across various sites at which power and law are negotiated. This radical change in the power relations between indigenous knowledge systems and the dominant epistemic narrative has not gone unnoticed in scholarly circles,<sup>8</sup> hence, the explanatory nature of the introduction to this essay. Part 2 offers a brief overview of the origins and history of the Ngwa people and draws attention to some of the notable TK practices among the people. Part 3 explores in greater detail the TK systems and forms of CE among the Ngwa people, particularly, their worldview on health and healing and how their

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<sup>6</sup> See generally, Ikechi Mgbcoji, *Global Biopiracy: Patents, Plants, and Indigenous Peoples* (UBC Press, Vancouver: 2005)

<sup>7</sup> R.E. Johannes, ed. *Traditional Ecological Knowledge: A Collection of Essays* (Gland, IUCN, 1989)

<sup>8</sup> Arun Agrawal, "On Power and Indigenous Knowledge" in Darrell Posey, ed. *Cultural and Spiritual Values of Biodiversity: A Complementary Contribution to Global Biodiversity Assessment* (Nairobi, UNEP, 1999) at 179.

worldview shapes the protocols for the acquisition, use, and dissemination of TK on medicinal uses of plants. Part 3 thus explores the nature and diversity of native healing among communities in Ngwaland. It must be borne in mind that a people's health systems are a reflection of their philosophical and cultural tenets.<sup>9</sup> Consequently, knowledge of the medicinal uses of plants is only a part of a more holistic conception of disease, treatment, and recovery among members of that society. It would therefore be invidious to examine traditional uses of the medicinal uses of plants outside of the prevailing cultural conception of illness in Ngwaland. More importantly, native healers embody and reflect the cosmological worldview of indigenous peoples. As practitioners of a recognizable regime of healthcare, traditional healers operate from a worldview that construes ailment and disease as a psychosomatic phenomenon, rather than a biological or pathogenic phenomenon. Hence, as part 3 argues, the practices of traditional healers, whether as diviners or herbalists, constitute a complex institution and a paradigm of its own distinct from Western allopathic theory of illness. This epistemic schism is at the root of the misunderstanding between Western allopathic medicine and indigenous peoples' narrative and conception of illness.

Consequently, traditional healers' knowledge of the medicinal uses of plants cannot be narrowly construed or understood as knowledge about the "active chemicals" in a given plant, animal or natural substance. This striking feature of the conception of medicinal uses of plants is at the center of the antinomy and conflict between modernization and protocols of traditional knowledge on the protection of TK. For example, while the patent system seeks to isolate and privatize the "active ingredient" in any given medicinal plant, native healers tend to conceive of the plant as part of a holistic repertoire for the alleviation of illness. In this regard, it bears mentioning that a feature which is often overlooked by scholars of this phenomenon is that traditional healers in Ngwaland, and arguably elsewhere in indigenous African communities, are largely categorized into two; the diviners and the herbalists. Both categories require immense and rigorous training and tutelage.

In resolving these difficult questions, Part 3 explores how misuse and misappropriation of TK may occur and persist unless certain factors such as modification of the jurisprudence on property ownership, the social nature of the inventive process, *et cetera*, are re-examined.<sup>10</sup> Ultimately, the best method or regime for the protection of TK is by giving juridical efficacy and recognition to traditional protocols for the protection of TK. Neither the indignant outrage against "biopiracy"<sup>11</sup> nor the sporadic protests against questionable patents on TKMP would yield an institutionalized solution to the problem of appropriation and misuse of TK.

Part 4 draws some inference and lessons for remedial action to deal with the emerging loss and erosion of TK systems. The most insidious challenge to the rehabilitation of TK is the psychological and ideological havoc wreaked on indigenous peoples' cultures by racist Christian and Islamic attacks on TK. The colonial project largely succeeded in depicting TK as barbaric, heathen, and satanic. Although the formal structures of colonialism have been dismantled, resurgent religious fundamentalism and the hangover of colonial mindsets make it

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<sup>9</sup> Patrick Twumasi, "Aging, Illness, and Traditional Medicine in Ghana" in Wilburn Watson, ed., *Black Folk Medicine: The Therapeutic Significance and Faith and Trust* (Guildford Press)

<sup>10</sup> The literature on this burgeoning school of thought is quite remarkable. See generally, Tom Greaves, (ed.) *Intellectual Property Rights for Indigenous Peoples: A Source Book* (Oklahoma: Society for Applied Anthropology, 1994).

<sup>11</sup> Ikechi Mgbecoji, *Global Biopiracy: Patents, Plants, and Indigenous Peoples*, *supra*.

very difficult for TK and forms of CE to take their pride of place. A second danger to TK and forms of CE is the epistemic and cultural gaps between the dominant forms of IPRs, especially, patents, and TK. Unlike the powerful industrialized countries that can shape international intellectual property regimes to serve their own agenda,<sup>12</sup> however, indigenous African communities lack the economic and political machinery needed to create a parallel and effective global regime on intellectual property. One realistic response would then be recognition by a forum such as the present one of the need for a continent wide treaty or convention, designed in a manner that encourages granting legal force to indigenous protocols of TK.<sup>13</sup> Until such a continental response is made, and the marauding influence of religious fundamentalism checkmated, TK and forms of CE may continue to languish in the peripheries or at best would continue to attract mere scholastic and commercial interest in the industrialized parts of the world while it suffers abuse and humiliation in its home and domestic terrain.

## PART 2: THE ORIGIN AND ACHIEVEMENTS OF NGWALAND (CIRCA 50,000 B.C.-A.D. 1970)

The Ngwa people constitute of the most notable clans in the Igbo nation. The Igbo nation itself needs no introduction to the world.<sup>14</sup> The origin of the word “Igbo” is a subject of scholarly debate. The word “Igbo” may mean (a) the speaker of the language, (b) the areas occupied by Igbo, and (c) the language spoken by Igbo people.<sup>15</sup> *Ndi Igbo* share a lot of values<sup>16</sup> including, “theology, law, philosophy, technology and education, and a distinct marriage system.”<sup>17</sup> Despite the hemorrhage<sup>18</sup> occasioned by the slave trade, Igboland remains one of the world’s most densely populated areas.<sup>19</sup> Scholars are generally agreed on

<sup>12</sup> For example, when it became obvious to the industrialized states that the existing patent regime could not protect computer chipmakers, the Washington Semi-conductor treaty was quickly concluded and ratified. Meanwhile, as Peter Drahos has noted, “...in contrast, the issue of protection for indigenous knowledge has largely remained just that, an issue.” See Peter Drahos, “Indigenous Knowledge and the Duties of the Intellectual Property Owners” (1997) 11 *Intellectual Property Journal* 201.

<sup>13</sup> Lara Ewens, “Seeds Wars: Biotechnology, Intellectual Property and the Quest for High Yield Seeds” (2000) 23 *Boston College International and Comparative Law Review* 285 at 307.

<sup>14</sup> Igbo contributions to human rights are well-documented across several continents. Olaudah Equiano, Dr. James Beale Horton and King Jaja of Opobo influenced Black and human rights in Europe, the Caribbean, North America, and Africa. See M.J. Herskovits, *Life in a Haitian Village*, New York, 1937; Olaudah Equiano, *The Interesting Narrative of the Life of Olaudah Equiano or Gustavus Vassa the African*, Norwich, 1794.

<sup>15</sup> The Igbo language is one of the speech communities in the Kwa sub-family of the Niger-Congo family. Some scholars have argued that Igbo language broke away from the Kwa sub-family circa 6000 B.C., G.M.

Umezurike, *Amamife na Ako na Uche: The Hub of Igbo Culture Renaissance in the Scientific Age*, Ahiajoku Lecture 1992, Owerri: Ministry of Information, 1992. The Igbo language is marked by a complicated system of tones used to distinguish meaning and grammatical relationships, a wide range of dialectical variations that is a source of difficulty to the Westerners. See P. Foster, *Africa South of the Sahara*, New York, 1968; I. Amadiume, *Male Daughters, Female Husbands: Gender and Sex in an African Society*, London, 1987. For a recent examination of the problems associated with the colonial attempt to “standardize” the language see M. Echeruo, *Ahamefula: A Matter of Identity*, Inaugural Lecture Ahiajoku, 1979. Owerri: Ministry of Information, 1979. at 7.

<sup>16</sup> M.A. Onwuejogwu, *An Igbo Civilization: Nri Kingdom and Hegemony*, London, 1981 at 14

<sup>17</sup> T. Agbasicre, *Women in Igbo Life and Thought*, London, 2000, at 2.

<sup>18</sup> J. A. Umeh, *Igbo People: Their Origin And Culture Area*, Enugu, 1999.

<sup>19</sup> J.H. Jennings & S.O. Oduah, *A Geography of the Eastern Provinces of Nigeria*, Cambridge, 1966 at 10.

the antiquity of the Igbo people.<sup>20</sup> The ancient character of the Igbo nation<sup>21</sup> is evidenced by their high population density.<sup>22</sup>

There are no Igbo traditions of migration from East-Africa or the Middle East.<sup>23</sup> The autochthonous theory of Igbo origins is further supported by the fact that unlike some other ethnic groups in Nigeria such as the Yoruba and Hausas, whose breakaway groups are found in Burkina-Faso and Niger/Chad respectively, the Igbos are not found anywhere save in their traditional homeland.<sup>24</sup> Pottery shards, stone tools, rock shelter, and other archaeological evidence, which have been carbon-dated, show that Igboland has been occupied for at least 50,000 years.<sup>25</sup>

Historians affirm that the Ngwa people are part of the Eastern Isuama group that lived originally in the Orlu axis. The Isuama group were said to be among the autochthonous inhabitants of Igbo land. The southward expansion of Isuama groups, which included the Ngwa and the Ohuhu, brought them into the Owerri area where they settled in Umunoha and Mbaise.<sup>26</sup> According to Jones and accounts by oral historians, this group further dispersed with the Ngwa group moving towards the Imo River.<sup>27</sup> As Professor Oriji has rightly pointed out, Ngwa traditions, like other oral traditions in different cultures that deal with culture heroes, are often interwoven with myths of doubtful historicity. Be that as it may, oral traditions provide historians the necessary pieces of evidence to piece together or illuminate some otherwise obscure parts of a people's past.

The Ngwa people occupy a central position in the Eastern strand of Igbos.<sup>28</sup> These strands represent 12 mini-civilizations of the Igbo which make up the pan-Igbo civilization.<sup>29</sup> The Ngwa group in conjunction with the Ibibio groups developed symbolic communication in written forms known as *nsibidi*. According to MacGregor, in Southern Ngwa the "Igbo and their neighbours widely used a system of writing, [the *nsibidi*] which apparently owed nothing to external stimuli."<sup>30</sup> The *Nsibidi* was confined to members of the secret cults, and some traditional healers, which regulated trade in the area. Ejidike adds that "these forms of writing

<sup>20</sup> For a brilliant analysis of the Igbo world view see *D. Nwoga, Nka na Nzere: The Focus of Igbo World View*, Ahiajoku Lecture 1984, Owerri, Ministry of Information, 1984.

<sup>21</sup> E. Spicer, *The Peoples of Nigeria*, Nigeria, 1961 at 58.

<sup>22</sup> B. Floyd, *Eastern Nigeria A Geographical Review*, London, 1969, at 20.

<sup>23</sup> E. Isichei, *A History of the Igbo People*, supra.

<sup>24</sup> A. Afigbo, *Ropes of Sand: Studies in Igbo History and Culture*, London, 1981, 1-50.

<sup>25</sup> Anya, Ahiajoku Lecture, supra; D.D. Hartle, "Archaeology in Eastern Nigeria" (1967) 93 *Nigeria Magazine* 134-143. For an argument in favour of the primacy of the Niger/Benue confluence origins of Igbo civilization see A. Afigbo, *Ropes of Sand*.

<sup>26</sup> John Oriji, *Ngwa History*, at 15.

<sup>27</sup> J.G.C. Allen, as cited to in Oriji, supra at 16-17.

<sup>28</sup> See for example, D. Ohadike, *Anioma: A Social History of the Western Igbo People*, Athens, 1994; J. Oriji, *Ngwa History: A Study of Social & Economic Changes in Igbo Mini States in Time Perspective*, New York, 1998; M.A. Onwuejogwu, *A Brief Survey of Anambra Civilization in the Igbo Culture Area*, Onitsha, 1972.

<sup>29</sup> The largest of these was the Nri hegemony while one of the smallest was the Abam/Edda. See Onwuejogwu, Ahiajoku Lecture, above, note 50. On the Aros see K.O. Dike & F. Ekejiuba, *The Aros of South Eastern Nigeria 1650 1980*, Ibadan, 1990.

<sup>30</sup> Rev. J.K. MacGregor, "Some Notes on Nsibidi" (1909) 39 *Journal of the Royal Anthropological Institute* 215. The *nsibidi* writing culture was largely eroded by European influence. Nsibidi took the form of formalised pictograms, like Chinese writing.

are one of those inventions in Africa, south of the Sahara, which had no Islamic or European root.”<sup>31</sup>

The Ngwa are the largest and the most populous of all Igbo groups. They occupy 512.8 square miles of land. Ngwaland has some of the most fertile farmlands in Igboland. Hence, the earliest form of human adaptation in Ngwaland is farming. Archeological evidence of ancient human activity shows that the Ngwa people have been cultivating food crops for at least 50,000 years.<sup>32</sup> The Ngwa people moved with their earth-deity, yams and iron tools into the present geographical space known as Ngwaland. The first place of settlement of the Ngwa people is called Eke-la-Afó. Interestingly, Eke-la-Afó is today a sacred forest. It is thus not a coincidence that Okpuala-Ngwa, the first settlement of the Ngwa group became the cultural capital of the Ngwa, the “center of their mythology and abode of their common earth deity”<sup>33</sup>-the Ala-Ngwa.

Oral traditions of Ngwa original settlement in the northern parts is irrefutably affirmed by the fact that northern Ngwa is the most densely populated part of Ngwaland (apart from Aba which has obviously witnessed a massive emigration from non-Ngwa Igbos). Culturally, the most important crop is the yam, which, until recently served as the staple food of the Ngwa people. Ngwaland is part of the West African yam belt that stretches from Cote d’Ivoire in the west to Gabon in the east. Indeed, over fifteen species of yam have been cultivated and identified in Ngwaland. Plant breeders estimate that it takes at least 5,000 years to cultivate the wild species of yams and make them non-poisonous. The immense variety of yam species in Ngwaland among the yam belt of West Africa is an irrefutable evidence of the antiquity of Ngwa contributions to modern agriculture.<sup>34</sup> An indigenous species of yams is ji-igwe. Ngwa peoples also cultivated cocoyams. It is a scientific fact that wherever plant species about is the center of origin of that particular plant. Ngwaland has one of the highest genetic diversity of cocoyams. Indigenous species of cocoyams include ede-inyamkpe and akpalangwugwu. The only non-indigenous species of cocoyam is the ede-Aro, which was introduced by Aro traders during the slave trade.

### PART 3: TRADITIONAL KNOWLEDGE SYSTEMS AND CULTURAL EXPRESSIONS IN NGWALAND

The dominant narrative on development has for centuries proceeded on the false assumption that indigenous peoples had no frameworks or protocols for articulating, recognizing, protecting, transmitting, and sharing intellectual property among the colonized peoples of Africa.<sup>35</sup> Nothing can be further from the truth. It must not be forgotten that the colonization of non-Europeans was partly justified on the theory of racial superiority of Europeans and the inferiority of “the savages and primitives” of Africa, Asia, the Americas, Australia and New Zealand. Properly understood, the colonial enterprise was not only an economic and political mission, but a legal concretisation of a racist and hierarchical agenda.

<sup>31</sup> E. Daysell, “Further Notes on Nsibidi Signs With Their Meanings From Ikom District, Southern Nigeria” (1911) 41 *Journal of the Royal Anthropological Society* 521-40.

<sup>32</sup> John Oriji, at 17.

<sup>33</sup> Oriji, at 17.

<sup>34</sup> Anya O. Anya, *Aliajoku Lecture*. supra.

<sup>35</sup> Felix Cohen “The Spanish Origin of Indian Rights In The Law Of The United States” (1942) 31 *Georgetown Law Journal* 12.

It was on the basis of racial differentiation of mankind that early international law justified the acquisition and colonization of large swathes of lands and cultures occupied by peoples whom the colonizing Christians from Europe dismissed as “backward territories”<sup>36</sup> and primitive peoples. The heavy influence of Christianity<sup>37</sup> on early international law must not be lightly dismissed. International law, which was a product of Christian Europe, was fundamentally a congealed form of Christian bigotry and a congregation of the Christian brotherhood.<sup>38</sup> In the pre-colonial era, the comity of states bound by early international law was more or less a comity of European Christians.<sup>39</sup> Accordingly, peoples and cultures outside the charmed circle of European Christianity were regarded as uncivilized savages in immediate need of civilization and enlightenment.

Fed on a diet of racist denigration and propagandist message of their presumed inferiority to Christian Europe, peoples of Africa have long been damaged by the belief that they were indeed inferior to the Europeans.<sup>40</sup> Colonialism was thus not simply a violent usurpation or overthrow of pre-existing political and economic structures of indigenous peoples across the world, rather, the colonial enterprise was in addition, an imposition of Eurocentric philosophies, values and world-view on indigenous and traditional peoples. In other words, beyond physical pillage and economic looting which the colonial project excelled at, it was a mechanism of cultural violence designed to remodel non-Western peoples and cultures in the image of Europe on the theory that indigenous peoples were sub-human. Thus, while non-Western epistemologies, cultures, and value systems were dismissed as irrational, mystical, natural and undeveloped, Western norms of civilization, world-view, epistemology and culture were uniquely positioned as rational, empirical, and universal ideals and attainable by all regardless of differences in culture.<sup>41</sup>

Cultures or peoples which stood in the way of this monolithic conception were regarded as irritating relics of a primitive age. As Makau Wa Mutua notes, “within this logic, history is a linear, unidirectional progression with the “superior” and “scientific” Western civilization leading and paving the way for others to follow.”<sup>42</sup> As non-Western epistemologies occupied the lower rung of the epistemological ladder designed by the colonial agenda, the native healer was a particularly odious figure, the personification of Satan and the embodiment of darkness.

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<sup>36</sup> Mark Lindley, *The Acquisition And Government Of Backward Territory In International Law: Being A Treatise On The Law And Practice Relating To Colonial Expansion* (New York, 1969)

<sup>37</sup> Douglas Sanders, “The Re-Emergence of Indigenous Questions in International Law” (1983) *Canadian Human Rights Yearbook* 1.

<sup>38</sup> Mark Javis, ed, *The Influence Of Religion On the Development Of International Law* (Martinus Nijhoff, 1991)

<sup>39</sup> For an examination of the ethnic character of international law, see Phillip Jessup, “Non-Universal International Law” (1973) 12 *Columbia Journal of Transnational Law* 415; Rosemary Coombe, “The Cultural Life Of Things: Anthropological Approaches To Law And Society In Conditions Of Globalization” (1995) 10 *American University Journal of International Law and Policy* 791.

<sup>40</sup> Keith Nunes, “We Can Do.... Better: Rights of Singular Peoples and the United Nations Declaration on the “Rights of Indigenous Peoples” (1995) 7 *St. Thomas Law Review* 521.

<sup>41</sup> Vandana Shiva, *Staying Alive: Women, Ecology And Development* (London: Zed Books Ltd, 1988)

<sup>42</sup> Makau Wa Mutua, “Savages, Victims and Saviours: The Metaphor Of Human Rights” (2001) 42 *Harvard International Law Journal* 201.

In this long and successful campaign against indigenous and traditional peoples, Christianity was at the forefront.<sup>43</sup> Having dismissed TK as barbarous and savage<sup>44</sup>, the new norm evolved that to be considered as civilized, the natives had to look, dress, and resemble Christian Europe.

With particular reference to TK on plants and associated knowledge of the uses of plants, until recent times, the notion or philosophy that non-Western epistemologies were primitive, backward and unscientific afforded an attitudinal anchor, for the denigration and non-recognition of non-Western frameworks of knowledge. To worsen a miserable situation, a majority of the innovations and improvements in the farming fields and societies of traditional and indigenous societies are undertaken by women. Often, these contributions and innovations are ignored or ill-appreciated in those cultural settings which ought to have championed the struggle for legitimating and recognizing those enormous contributions.<sup>45</sup>

Therefore, the processes of de-legitimizing the intellectual inputs of local and traditional farmers and healers is a twin-pronged mechanism encompassing vestiges of racism and extant consequences of the colonial project in a quickly evolving global order. It is within this milieu that the Ngwa people of South East Nigeria have grappled to understand what went wrong. Like other communities in South Eastern Nigeria, the worldview of Ngwa people is “predominantly holistic rather than analytic. The cultures tend to see the total picture, not parts of it.”<sup>46</sup> The central thrust of such holistic conception of the world is that communities in Ngwaland are inspired by the concept of dynamic duality and balance between opposites and the interactive roles of the entities and spiritual forces in both cosmic and temporal realms. The spirit world, an animate and inanimate place, is also the abode of both the creator and the ancestral spirits.

The temporal world is construed as a marketplace for both the dead and the living, both of whom are in a constant state of birth, death, and rebirth. In this dynamic equilibrium, the dead are expected to come back to life to join the lineage. Life is thus a cycle in which all created beings—animate and inanimate—are in a constant cycle of birth, growth, death and rebirth. Violations of traditional indigenous laws and norms of behaviour constitute a disturbance of the harmony between the spiritual and the temporal. Events that could upset the equilibrium include natural disasters, like long continuous droughts, famine, epidemic, sorcery and human-instigated activities such as litigiousness, homicide, violation of taboos, et cetera. These incidents are deemed to be infractions of the natural balance of life forces.<sup>47</sup> As Francis Cardinal Arinze has rightly observed, restoring the social and cosmological

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<sup>43</sup>De Vittoria was supported by others like Bartolome las Casas who opined that the natives were creatures of God and endowed with the same rational capacities as the invading Europeans. Similarly, Pope Paul III in the Papal Bull of 1537 clearly noted that the Indian were human beings with the same rational abilities as the Europeans. See Felix Cohen “The Spanish Origin Of Indian Rights In The Law Of The United States” (1942) 31 *Georgetown Law Journal* 12.

<sup>44</sup>Guillermo Floris Margadant, “Official Mexican Attitudes Towards The Indians: An Historical Essay” (1980) 54 *Tulane Law Review* 967. See also, Edwin Williamson, *The Penguin History Of Latin America* (London: Penguin, 1992)

<sup>45</sup> It is equally true that even in the dominant Western scientific paradigm the scientific and technological achievements of women are often uncelebrated. For a compendium and analysis of ground-breaking inventions by women and which have not been duly recognized in the popular narratives, see Autumn Stanley, *Mothers And Daughter Of Invention* (The Scarecrow Press, 1993)

<sup>46</sup> Anya O. Anya, *The Environment of Isolation*. 1982 Ahiajoku Lecture. Ministry of Information, Owerri at 9.

<sup>47</sup> V.C. Uchendu, *The Igbos of South Eastern Nigeria*. 1965 at 11.

equilibrium may take the form of several types of sacrifices (*ichu aja*),<sup>48</sup> and other means of rearranging social and cosmological order. Ngwa people, in their CE and TK systems, often distinguished the subtle but profound differences between custom, law, and good morals or admirable conduct.

Another radical feature of communities in Ngwaland is that despite the appearance of “openness”, most of the societies were in fact “closed.” Consequently, only those members of society that participated in the inner workings and dynamics of various aspects or parts of society could speak with authority on how that aspect or dimension of society was configured or ordered.<sup>49</sup> For example, unless one was a titled chief and had participated in the rituals, ceremonies, and protocols that chiefs participate in by virtue of their office, one may not actually know exactly how chiefs conducted their businesses. Similarly, unless one was initiated into a particular cult or group, it is difficult to speak knowledgeably about the workings and organizational structure of such cults or group.

In effect, Ngwaland, contrary to the extravagant claims by some colonial historians was bifurcated and often secretive in its inner workings and operations. On the one hand, there was the façade, which everyone could see but beyond the veil or façade, were several layers of exclusion and excluding levels of social ordering which only those who by age, class, cult-membership, gender, et cetera were members of could participate in and more importantly, speak authoritatively about.

With particular reference to TK on medicinal uses of plants, the first immediate consequence of these two radical attributes of Ngwa societies was that disease and infirmity was largely construed as a symptom of spiritual imbalance or disorder; a psychosomatic phenomenon. Therapies were therefore designed to restore the balance in the spiritual realm, which will in turn restore the sick person to a state of good health. It must be understood here that good health was not merely the absence of disease but the totality of physical, emotional, and psychological well-being. As Chidi Oguamanam has rightly pointed out, this is a radical departure from Western allopathic medicine, which conceives of illness, no matter how complex that illness may be, as a biological process or condition,

[r]equiring a directly targeted course of treatment. As such, a medical condition is generally perceived as Newtonian, mechanical and organismic in nature. For this reason, allopathic or orthodox medical science is divided into several major disciplines which in turn are divided into various sub-disciplines, based on organismic conception. Thus... part of the diagnostic process is to break down the situation, including the human body, into component parts. Effort is directed at tracing a single causal agent responsible for the ailment. When identified, treatment is administered on the implicated organ or targeted at the causal agent now isolated... the overtly mechanistic approach is a consequence of the philosophical revolution of the Renaissance and the success of the germ theory.”<sup>50</sup>

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<sup>48</sup> Francis Arinze. *Sacrifice in Ibo Religion* (Ibadan University Press. 1970)

<sup>49</sup> Azuka Dike. *The Resilience of Igbo Culture* (Enugu, 1985) at 157.

<sup>50</sup> Chidi Oguamanam. *Between Reality and Rhetoric: The Epistemic Schism in the Recognition of Traditional Medicine in International Law* (2003) 16 St. Thomas Law Review 59.

This approach has been very successful despite the fact that more than seventy percent of illnesses are in fact psychosomatic in origin.<sup>51</sup> In contrast with the dominant allopathic approach to medicine, Ngwaland, like many other non-Western paradigms of healthcare and medicine, emphasizes the psychosomatic dimension of illness. An individual's health is construed or interpreted in relation to a harmonious relationship with community and other supernatural forces. Given this holistic conception of health, the germ theory of disease, which is the mainstay of western medicine, was not well regarded in Ngwaland, and in particular, among TK healers.

In this conception of illness, spiritual, emotional, and psychological factors constitute the primary focus of the diagnoses as well as the location of the remedy for the illness. The restoration of sick persons to good health often involved sacrifices, prayers, incantations, and other rituals ostensibly designed to restore order and harmony in the spiritual realm.<sup>52</sup> The obvious implication of this paradigm as it implicates medicinal plants is that when plants are used in the treatment of a sick person, the healer does not really rely or focus on the so-called "bioactive" part of the plant but conceives the plant as part of a complex and holistic regime deployed towards the alleviation of illness. Herbs and other material forms of treatment were then used or applied to supplement the spiritual and psychological aspects of the treatment offered by the native healer.

This approach is quite different from allopathic medicine in which the primary focus is on the "active" component of the plants or materials used in conjunction with the plant. In some cases, the plant itself is representative of a beneficial spirit entity. Needless to say, this conception of health and healing is at odds with the dominant and fashionable Eurocentric conception of health and healing. Left in the lurch, TK and forms of CE have since struggled to find its feet and assert its relevance without drawing the ire of "civilized" and "educated" Ngwa people of Christian persuasion. The irony here is that despite its public denigration, TK is often patronized by the local citizenry, preferably outside the gaze of the guardians and gatekeepers of respectability and piety.

The second radical consequence of indigenous worldview of medicine and the "closed" nature of communities in Ngwaland is that contrary to the assertions of many scholars, knowledge and practice of TK by healers was not always in the public domain. The common or general knowledge by a large segment of the local populace of the medicinal properties of certain plants has led to the unfounded notion that TK is always in the public domain. Such a notion is in fact unfounded and perhaps arises from a misconception of the character and institutional systems in which native healers in Ngwaland operate. While many local people may have common knowledge of the medicinal properties of certain plants or parts of a plant, the practice of native healing is not an all-comers affair. As in Western medicine, common knowledge that aspirin could alleviate pain does not everyone with such knowledge expert in the subject of the causes and alleviation of body pain.

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<sup>51</sup> Oguamanam, *Ibid.*

<sup>52</sup> A.O. Ekwunife, "Integration of Traditional African Values in Priestly Formation" (1997) 39 # 4 *African Ecclesial Review* 7.

The reality in Ngwaland and by analogy in many traditional African societies is that the native healer is both a complex person, a member of an institution, and in some cases, an institution of its own.<sup>53</sup> Generally speaking, there are two classes of native healers in Ngwaland. Both classes often undergo different types of tutelage, training, and socialization. Both classes also perform different functions and in each class, there are different levels of skills, competence, knowledge, specialization, experience and prowess; much like the classifications in western orthodox medicine. One group of native healers are those whose training and “calling” is in the field of mediating between human beings and spiritual entities such as gods/goddesses, spirits, natural forces, supernatural elements, et cetera.

These are those healers, whose forte is in the performance of rituals, making of incantations, divination, removal or placement of curses, and such other functions that are largely meditative and focused on the spiritual realm. As intercessors and diviners, these groups of healers are trained to diagnose the spiritual causes of ailments, ill luck, tragedies, et cetera and then prescribe remedies such as sacrifices, removal of curses, et cetera. Of course, in their ministrations, it is possible that they use some plants believed to possess spiritual qualities but their area of core competence is not in medicinal herbs, per se.

Such healers are often “called” to their professions by a “spirit” or “deity” that they serve or worship or have been “bonded” to. It is not unusual for a famous healer with many children to die without any of his children being “called” by that deity to serve. In such cases, it is not unusual that by working closely with the healer, they would have gained some knowledge of the various medicinal uses of certain plants. However, such knowledge may not suffice to constitute them into traditional healers on the same professional scale as their deceased mother/father. In addition to those who have been “called” by spirits and deities, it is also possible for individuals to choose, on their own volition, to be trained in “schools” designed for apprentice native healers. The training often lasts seven (7) to fourteen (14) years and requires the performance of remarkable feats of endurance, many years of tutelage under experienced native healers, et cetera. At the end of the apprentice’s training, whether s/he was called or chose by himself/herself to be a diviner, the new graduate native healer is “given” or inherits his/her tools of trade, which would include idols, deities, various charms, amulets, et cetera.

It must be emphasized that admission to the “school” where native healers are trained, is not an all-comers affair. Rigorous admission tests are often administered. Certain “signs” and “manifestations” of admissibility are often taken into consideration. It is not unusual for certain body features such as a physical deformity to be a disqualifying feature. On the other hand, there are institutions that prefer candidates with certain body features, for example, albinos and persons with hunchback. Moreover, the length of time and stress of the apprenticeship has been known to deter many a dilettante. Apprentice healers often have to memorize thousands of different incantations, learn how to perform thousands of different sacrifices to hundreds of deities and above all, master the ethics of their job. It must be emphasized that there are thousands of deities with varying levels of “power”. Before an apprentice would become a “powerful” native healer, s/he must have acquired enormous experience and probably “taken” many other deities.

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<sup>53</sup> A.N. Okoro. *Chukwu ka Dibia*. Ahiajoku Lecture 1988. Owerri. Ministry of Information and Culture, 1988.

Furthermore, the deities that are “taken” do not all possess equal amount of power or have equal authority over all ailments. In effect, the deity that a native healer serves plays a role in determining whether that native healer is reputed to have expertise in curing certain types of ailment. For example, a native healer who worships the “god of insanity” is far more likely to be efficacious in dealing with patients with mental illnesses than a healer who worships the “goddess of infertility.” It is not unusual for a native healer who is expert in one field to refer his/her patient to another or a senior colleague with expertise in the pertinent field. Consequently, a lack of appreciation by many scholars of the complexity of the institution of native healing has led to some terrible generalizations made in contemporary literature on the subject. Generally speaking, native healers who are primarily diviners are not as knowledgeable in medicinal plants as those healers who are primarily herbalists. As I observed earlier, there are few cases where both categories intersect or tend to converge but the primary distinction between both categories remains generally valid.

The other group of native healers comprises those whose expert knowledge of the medicinal properties of thousands of plants is simply legendary. Largely as a result of the Christian assault on the diviners, the group of TK practitioners with expertise in medicinal plants is the usual darlings of Western scholars, researchers, and institutions. The popular myth is that those groups of healers are more or less “village chemists” without the baggage of idolatry, superstition, and diabolism associated with the diviners. The practices of herbalists has been defined by the World Health Organization (WHO) as “the sum total of the knowledge, techniques, skills and practices based on the theories, beliefs, and experiences indigenous to different cultures, whether explicable or not to Western science, used in the maintenance of health, as well as in the prevention, diagnoses, improvement or treatment of physical or mental illness”.<sup>54</sup> Conversely, of course, diviners are treated with immense skepticism, indeed disdain, by Western researchers and bioprospectors.

Like native healers with expertise in divination, healers in this category often receive many years of training and tutelage from older and more experienced healers. The tutelage and training often takes the shape of the apprentice watching the experienced healer ply his/her trade, helping the experienced healer gather various plants and mixing the pertinent plants either with other plants or with other materials.

As I have repeatedly cautioned, there are instances where it would be invidious to separate the work of the diviner from that of the herbalist. There are cases where the healer is also a diviner and vice versa but the point remains that native healing, whether in the field of divination and sacrifices or in herbal medicine is a complex and sophisticated institution as opposed to the pedestrian practice that it is portrayed to be in contemporary literature. More worrisome, however, is the brazen attempt in recent times by virtually all categories of TK practitioners in Ngwaland to dress up as “village chemists” in a desperate bid to escape the artificial but insidious opprobrium attached to divination and other forms of TK that smack of “witchcraft.” Given that I have elsewhere dealt at length with the aspect of patents and its impact on TK,<sup>55</sup> I will limit my comments here to the socio-cultural forces that constitute a mortal threat to TK in Ngwaland.

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<sup>54</sup> WHO. General Guidelines for Methodologies on Research and Evaluation of Traditional Medicine

<sup>55</sup> See Ikechi Mgbeoji, *Global Biopiracy*, *supra*.

## PART 3.2: MODERN CHALLENGES AND EXPECTATIONS OF NGWA TK HEALERS

From the foregoing, it is not a coincidence that of the two main categories of native healers, the diviner is the least popular and has thus been banished to the peripheries while the herbalist has largely become the respectable face of TK, at least in the eyes of the biotechnology industries, WHO, and some Western scholars. For his part, the diviner is virtually feared as well as despised by many Western institutions. Dismissed as a quack, a fraud, and a relic of a devilish, primitive age, recent discussions on the patenting of medicinal plants have focused on the knowledge possessed by herbalists. The emphasis has thus been on the “active” ingredients of medicinal plants.

Such focus by the industry, scholars, and WHO, on the herbalist’s phenomenal knowledge of the medicinal uses of plants has tended to dissociate that knowledge from the wider cultural and holistic context in which both the diviner and the herbalist operate.<sup>56</sup> As rightly pointed out by Professor Chidi Oguamanam, “the emphasis on active ingredients ... advances not only the Western scientific culture but also advocates “mercantilism” and “extractivism” with which Western science and its intellectual property allies have besieged indigenous knowledge systems.”<sup>57</sup> It is my considered view that the delegitimation of the diviner and the bifurcation of what is essentially a holistic process is a serious problem that must be addressed.

Despite the attempts of the modern herbalist to speak the language of the Western chemist and do all that s/he thinks is necessary to morph into a “legitimate” holder and practitioner of valuable knowledge, non-Western empiricism has been largely misconstrued as an exercise in exoticism and a voyage to the worlds of charlatanism and quackery. In this sense, TK that has not been bottled and packaged in Western style is at best, a form of “folklore”<sup>58</sup> while Western empiricism is unabashedly heralded as “scientific” and universal in character.

In the best of times, a second major challenge is the erroneous but pervasive notion that TK is knowledge about the “natural” workings of nature. The implication here is that native healers or herbalists do not make intellectual inputs in identifying, preparing, and prescribing herbal remedies. References to the innovations and knowledge of traditional societies, especially on the issue of TK as “traditional” are often misconstrued to imply or mean that innovations or new products within the TK systems are not real and deserving of respect and protection. Needless to add, the notion of trite antiquity associated with TK is a misconception of the nature of TK itself. As the Four Directions Council points out,

[W]hat is ‘traditional’ about traditional knowledge is not its antiquity but *the way it is acquired and used*. In other words, the *social process of learning and acquiring which is unique to each indigenous group, lies at the heart of its ‘traditionality.’* Much of this knowledge is actually quite new, but it has a social meaning and legal character, entirely

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<sup>56</sup> Chidi Oguamanam, *supra* note 59 at 56.

<sup>57</sup> *Ibid.*

<sup>58</sup> Martha Johnson, ed, *Lore Capturing Traditional Environmental Knowledge*, *supra*.

unlike the knowledge indigenous people acquire from settlers and industrialized societies.<sup>59</sup>

Article 8 (j) of the CBD also recognizes the dynamic and living character of traditional knowledge. The second common misconception about traditional knowledge is the notion that indigenous knowledge of the medicinal uses of plants are mere discoveries of “natural phenomena” waiting for the fortunate discoverer. As Gurdial Nijar has observed,

[T]raditional uses, although based on natural products, are not ‘found in nature’; as such. They are products of human knowledge. To transform a plant into a medicine, for example, one has to know the correct species, its location, the proper time of collection (some plants are poisonous in certain seasons), the part to be used, how to prepare it (fresh, dried, cut in small pieces, alcohol, the addition of salt, etc.), the way to prepare it (time and conditions to be left in the solvent). And finally the posology (route of administration and dosage.)<sup>60</sup>

The fact that TK is natural does not necessarily mean that there is an absence of human intellectual input. As already noted in the preceding pages, native healers in Ngwaland undergo many years of rigorous training and apprenticeship. Native healers in Ngwaland vary in their skills, competence, and knowledge. Some native healers are less knowledgeable than others. The difference in skill is often a function of their research abilities, experience, and willingness to experiment or innovate. It is therefore no coincidence that a decisive number of drugs derived from plant resources have been with the help of the most knowledgeable and innovative native healers.<sup>61</sup>

#### 4. CONCLUSION

The foregoing pages have shown that TK in medicinal uses of plants in Ngwaland faces enormous challenges ranging from a widespread ignorance of how its structure have evolved over the millennia. TK in Ngwaland suffers a legitimacy crisis arising from uncritical acceptance of “modernization” and more worrisome, attempts to impose Eurocentric standards on the protection of TK. It is often forgotten that there is a palpable epistemic and structural difference in worldview between dominant regimes of intellectual property rights (IPRs) protection and indigenous protocols of protecting TK.

Given the problems with adjusting Western IPRs regimes to suit the demands or requirements of TK, the question that arises is how to address and redress this crisis of legitimacy confronting TK. The Nigerian government has recently passed into law a legislation to govern and regulate the practice of traditional medicine in Nigeria. I was privileged to consult with the Nigerian legislative arm on various parts of the bill. While the

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<sup>59</sup> Graham Duffield, “The Public and Private Domains: Intellectual Property Rights in Traditional Ecological Knowledge” *Oxford Electronic Journal of Intellectual Property Rights* <<http://users.ox.ac.uk/~mast>. Accessed on 9/21/99.

<sup>60</sup> Gurdial Nijar, *TRIPS and Biodiversity: The Threat and Responses A Third World View* (Malaysia: Third World Network, 1996) at 16.

<sup>61</sup> Naomi Roht-Arriaza, “Of Seeds and Shamans: The Appropriateness of the Scientific and Technical Knowledge of Indigenous and Local Communities” (1996) 17 *Michigan Journal of International Law* 940.

new legislation has several strong merits, the overt attempt to place TK under the supervision of Western-trained experts with their sympathies firmly in Eurocentric concepts of IPR protection is problematic. The short point here is local initiatives may be helpful but a certain degree of decolonization of the IPR regime would be much preferable and relevant to local communities in Ngwaland.

In sum, the present writer disagrees with the emerging view that “we must mold and expand existing regime to the needs of indigenous peoples.”<sup>62</sup> The better view, I think, is to grant legal effect to the existing indigenous protocols for the protection of the TK possessed by innovative native healers. Tinkering with the dominant regimes of intellectual property regimes perpetuates the colonial mind-set that indigenous peoples did not have autochthonous and effective legal regimes for the propagation, transfer, sharing, and alienation of knowledge. It is not too late in the day to accord native healers the legal cover for autochthonous and familiar protocols by which they have protected, transmitted, and improved upon their knowledge for thousands of years.

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<sup>62</sup> Hannig. *supra* note at 197.