

THE INTERSECTION OF TRADITION AND LAW: ADAPTING NATIVE KNOWLEDGE AND PRACTICES IN MODERN LEGAL FRAMEWORKS¹

Abstract

This paper examines the complex interplay between Nigeria's formal legal system and indigenous knowledge, with a focus on the challenges and opportunities involved in admitting evidence from traditional practitioners in courts. It explores historical and contemporary judicial approaches to spiritual and customary evidence, highlighting the friction between colonial legal frameworks and indigenous cultural perspectives. By analysing Nigerian case laws, statutory frameworks, and international jurisdictions (United Kingdom, United States, and Canada), this study exposes the complexities of evidentiary requirements, cultural biases, and constitutional constraints that influence the admissibility of traditional testimony in courts. Despite significant practical challenges, such as lack of standardized procedures, difficulties in verifying spiritual claims, and conflicts with human rights norms, the paper identifies promising opportunities to bridge formal and informal justice systems. Recognizing traditional practitioners as expert witnesses, enhancing judicial and community understanding, and fostering legal pluralism can improve access to justice for customary communities and enrich the Nigerian legal system. To address these issues, the paper recommends developing clear guidelines for admitting traditional testimony, providing judicial education on customary knowledge, codifying certain customary practices without diluting their cultural significance, appointing cultural experts in court, balancing cultural recognition with constitutional protections, and engaging communities through legal literacy initiatives. Ultimately, the integration of indigenous knowledge into Nigeria's legal system is not only about evidence but also about justice. A more inclusive legal framework that respects cultural diversity and legal pluralism is essential for a legal system that truly serves the people it governs.

Keywords: Tradition, Law, Intersection, Native Knowledge and Practices, Modern Legal Frameworks

1. Introduction

Native knowledge, encompassing traditional practices, customs, and beliefs, has long been an integral part of indigenous communities. This rich cultural heritage holds significant value, not only for its historical importance but also for its relevance in addressing contemporary issues in governance, justice, health, and community life. In many societies, including Nigeria, traditional knowledge systems continue to shape how people understand the world around them and resolve conflicts, maintain social order, and connect with the spiritual realm. Over the years, there has been a growing recognition of the need to incorporate traditional perspectives into the modern legal system. In Nigeria, this awareness has grown because the legal system is made up of different laws such as customary, religious, and statutory laws that coexist and often intersect. Courts and lawmakers increasingly confront issues such as indigenous land rights, chieftaincy and customary leadership systems, cultural heritage protection, spiritual practices, and the safeguarding of sacred sites. These issues cannot be effectively addressed using imported legal standards alone; they require a deeper engagement with the values, practices, and knowledge systems of the people most affected. Despite this growing awareness, native knowledge often struggles to gain formal recognition within Nigeria's modern legal institutions. This is partly a result of colonial influence, which placed indigenous systems below British legal traditions and created a legal structure that still tends to marginalise traditional, non-Western knowledge and authority. As a result, traditional practices and perspectives are frequently viewed as informal or non-legal, even when they play a central role in the lives of communities.

One particular area where this exclusion is evident is in the courtroom. Legal proceedings, which are meant to serve justice, often fail to reflect the lived realities of the people they aim to protect. The expertise of native doctors, who hold specialized knowledge in traditional healing, spirituality, and dispute resolution within many Nigerian communities, is yet to be formally recognized. These practitioners often serve as intermediaries between the physical and spiritual worlds, playing vital roles in health, justice, and social harmony. However, their voices are largely absent in courtrooms, especially in cases where their knowledge could help explain the cultural background of a dispute or provide clarity on traditional practices.

This study explores the potential benefits and challenges of admitting native doctors as expert witnesses in court. It examines how their specialized knowledge can inform and enhance the administration of justice, particularly in cases involving indigenous rights, customary obligations, spiritual harms, and traditional norms. Rather than viewing native doctors as outsiders to the legal process, this study considers how their expertise might be integrated in a way that respects both traditional knowledge and the requirements of a formal legal system. By examining the intersection of tradition and law, this research aims to contribute to a deeper understanding of how native knowledge can complement modern legal frameworks in Nigeria. It also considers examples from other

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jurisdictions, such as, United States, United Kingdom and Canada, offering comparative insights into the challenges and approaches to integrating traditional knowledge in legal contexts. Ultimately, the findings of this study seek to contribute to law reform and legal practice in Nigeria. Recognizing the value of native doctors as expert witnesses has the potential to make justice systems more inclusive, culturally sensitive, and effective. It also acknowledges the legitimacy of indigenous knowledge systems and affirms their place in shaping the legal and moral foundations of society. As Nigeria faces ongoing challenges with cultural diversity, governance, and justice, valuing the knowledge of traditional leaders may provide a way to develop a legal system that is fairer and better represents all of its people.

2. Historical Context, Conceptual Clarifications, and Theoretical Framework

Historical Context

The legal development of Nigeria has been deeply shaped by its colonial past, particularly in how it affected indigenous legal systems and institutions. Prior to colonization, indigenous communities in Nigeria were governed by well-established customary laws, rooted in their traditions, spiritual beliefs, and social norms.² Native doctors played an important role in this structure. They were deeply involved in healing, spiritual guidance, and helping to resolve conflicts, making them key figures in maintaining social balance and justice.³ However, the advent of colonial rule disrupted these systems. British authorities introduced a foreign legal order that prioritized English law and treated native customs as inferior. This shift weakened traditional governance structures and excluded indigenous voices from legal and administrative decisions. Native doctors, like other traditional leaders, were side-lined as colonial authorities redefined what counted as legal knowledge and expertise.

Several colonial-era laws and policies explicitly or implicitly excluded indigenous customs and knowledge from legal recognition. For example, the introduction of the Native Courts Ordinance and the codification of customary laws often distorted or limited indigenous practices by subjecting them to colonial interpretation. This often took away the original meaning and flexibility of these customs.⁴ In addition, the changes made it easier for colonial governments to take control of lands, resources, and people, often forcing indigenous communities off their ancestral lands without properly recognising their rights.

Despite the challenges, there have been steps toward recognizing indigenous rights. A major milestone is the United Nations Declaration on the Rights of Indigenous Peoples (2007), which affirms the right of indigenous peoples to maintain their legal systems, cultural traditions, and institutions. Domestically, the 1999 Constitution of Nigeria recognizes the significance of customary law. It preserves those laws that were in force prior to the Constitution's commencement, referring to them as 'existing laws.'⁵ While there are still obstacles, this provides a foundation for integrating traditional practices into formal legal systems.

In recent times, there has also been increased advocacy within Nigeria for the recognition of traditional knowledge and institutions. Community leaders, scholars, and cultural advocates have continued to push for better protection of indigenous rights, including land tenure systems, traditional leadership structures, and cultural heritage. These efforts reflect a broader desire to integrate native knowledge and expertise into Nigeria's legal framework, including the recognition of native doctors as expert contributors to justice.

Conceptual Clarifications

Native Knowledge/Indigenous Knowledge: Native knowledge, also known as indigenous or traditional knowledge, refers to the body of skills, beliefs, and practices developed by indigenous communities through their interaction with the environment.⁶ It includes oral traditions, rituals, healing practices, stories, songs, and customary laws that are passed down through generations. According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), indigenous knowledge is specific to a culture and context, orally transmitted, dynamic, and essential to the survival and identity of indigenous peoples.⁷ Similarly, the World

² Falola, Toyin, and Matthew M. Heaton, *A history of Nigeria* (Cambridge University Press, 2008)

³ T. Adefolaju, 'The Dynamics and Changing Structure of Traditional Healing System in Nigeria' *African Journals Online* (2011) <<https://www.ajol.info/index.php/ijhr/article/view/73868/64545>> accessed 2nd June, 2025

⁴ Anthony Diala, 'A Butterfly That Thinks Itself a Bird: The Identity of Customary Courts in Nigeria' *Journal of Legal Pluralism and Unofficial Law* (2019) 51(3) 381-405 <https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3511909_code2532427.pdf?abstractid=3511909&mirid=1> accessed 2nd June, 2025

⁵ Constitution of the Federal Republic of Nigeria, 1999 (as amended 2023), s 315

⁶ Dudgeon, Roy C., and Fikret Berkes, 'Local Understandings of the Land: Traditional Ecological Knowledge and Indigenous Knowledge' *Nature across cultures: Views of nature and the environment in non-Western cultures*. Dordrecht: Springer Netherlands, (2003. 75-96.)

⁷ Magni, Giorgia, 'Indigenous Knowledge and Implications for the Sustainable Development Agenda' (2016) <<https://unesdoc.unesco.org/ark:/48223/pf0000245623.locale=en>> accessed 1st June, 2025.

Intellectual Property Organization (WIPO) and the United Nations recognize that traditional knowledge also includes cultural expressions such as folklore, visual art, architecture, and traditional medicine.⁸ These cultural expressions are deeply embedded in the identity and heritage of indigenous communities. They are not merely historical objects but living systems that continue to influence how communities understand health, justice, spirituality, and governance. Yet, traditional knowledge and the experts who hold it are rarely acknowledged in legal proceedings.

Custom: Custom refers to long-standing practices or ways of doing things that are accepted by a community as binding.⁹ It is a key source of unwritten law and still plays a role in modern legal systems, especially in societies with strong traditional values. For a custom to be legally recognized, it must be reasonable, widely accepted within a community, clear in meaning, consistently followed, and must have existed since time immemorial. Custom is also understood as a rule people follow out of shared understanding, not because it was imposed by a political authority.¹⁰ Legal scholars like V.D. Mahajan explain that in early societies, customs developed naturally and governed daily life.¹¹ These customs reflected what people believed to be right and were later acknowledged by rulers as law. However, colonial legal systems often displaced indigenous customs to impose their own authority. A clear example is the *Tanistry case of 1608*,¹² where the English Crown abolished the Irish system of tanistry, a customary form of succession based on election rather than inheritance, declaring it void to strengthen royal authority. This ruling replaced indigenous succession customs with English hereditary law, illustrating how colonial powers systematically undermined native legal traditions. Similar patterns occurred in Nigeria, where indigenous customs were marginalized under colonial rule, yet customary law continues to play a crucial role in local governance and dispute resolution.

Customary Law: Customary law refers to a system of rules derived from the customs and traditions of a specific community, which are recognized as binding and often incorporated into the national legal framework, such as in the Constitution. It plays a key role in personal and communal matters like marriage, inheritance, and land ownership, especially in societies with mixed legal systems. It has also been described as the body of social practices and behavioural patterns that evolve naturally within a community, are widely accepted, and gradually acquire legal recognition because they promote order and cohesion.¹³ The courts have contributed to shaping the legal understanding of customary law. In *Zaidan v. Mohosen*,¹⁴ the Supreme Court described it as laws which are not enacted by any competent legislature but are binding and enforceable on Nigerians subject to it. Similarly, in *Olobodun v. Lawal*,¹⁵ customary law was defined as a set of rules of conduct applying to persons and things in a particular locality. These judicial definitions reinforce the idea that customary law emerges organically within communities, yet holds legal force when recognized by the courts. While it originates from customs, it takes on a legal character when courts validate it or where it has been formally adopted into law. Rather than being externally imposed, these laws evolve naturally within societies and reflect deeply rooted cultural, social, and religious norms. Scholars like Keeton define customary law as rules of conduct regarded as binding and applied by courts because they are consistently followed within a group.¹⁶

There has been debate over whether courts should be the ones to define and recognize customary law. Some scholars, like Salmond, define it as a regular pattern of behaviour followed by a community and regarded as binding by the courts.¹⁷ However, others, such as Irene Watson, have criticised the very use of the term ‘customary law.’ Watson argues that calling Indigenous laws ‘customary’ is a colonial imposition—it frames these laws as subordinate to state authority, rather than recognizing them as independent, sovereign legal systems that existed long before colonization. From her perspective, Indigenous laws are not just customs that evolved into law — they were already full, sovereign systems. Calling them ‘customary’ makes them sound like informal practices needing recognition by a colonial or national legal system to be valid.¹⁸ This critique is relevant in the Nigerian

⁸ WIPO, ‘Intellectual Property, Traditional Knowledge and Traditional Cultural Expressions and Folklore’ <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_transition_9.pdf> accessed 1st June, 2025

⁹ Chatterjee, Akash. ‘Custom and Law’ *International Journal of Engineering Development and Research* 7.3 (2019): 557-560.

¹⁰ Diamond, Stanley, ‘The Rule of Law versus the Order of Custom’ *Social Research* (1971): 42-72. <https://www.jstor.org/stable/40970048> accessed 2nd June 2025

¹¹ Mahajan, Vidya Dhar, *Modern Indian History* (S. Chand Publishing, 2022)

¹² The Case of Tanistry (1608) Davies 28 (KB)

¹³ Marasinghe, Lakshman, ‘Customary Law as an Aspect of Legal Pluralism: With Particular Reference to British Colonial Africa’ *JMCL* 25 (1998): 7. <https://heinonline.org/hol/cgi-bin/get_pdf.cgi?handle=hein.journals/jmcl25§ion=6> accessed 2nd June, 2025

¹⁴ *Zaidan v. Mohssen* (1973) LCN/1676 (SC)

¹⁵ (2008) 1 All N.L.R. 604

¹⁶ Keeton, George Williams. ‘The elementary principles of jurisprudence.’ (1930) <<https://philpapers.org/rec/KEETEP>> accessed 1st June 2025

¹⁷ Malissa Binti Salleh, ‘Native Law as One of The Sources of Law in Sabah Legal System’ *Malaysian Journal of Social Sciences and Humanities (MJSSH)*, (2021) Volume 6, Issue 11, (page 399 – 412),

¹⁸ *Ibid*

context, where colonial rule similarly restricted the scope of customary law to what could be recognized and controlled by colonial and later national courts. It highlights how legal recognition can sometimes diminish, rather than affirm, the autonomy of Indigenous legal systems. Ultimately, customary law remains a vital component of legal systems, especially in pluralist societies like Nigeria, where it continues to shape personal, communal, and traditional life.

Native Doctors/Traditional Healers: Native doctors, also known as traditional healers or ‘Dibia’ in Igbo culture, are highly respected figures who serve as both medical practitioners and spiritual leaders within Indigenous communities.¹⁹ They are believed to possess supernatural or divine powers derived from ancestral traditions, which allow them to heal, protect, and guide members of their society. Far from being mere herbalists, they are seen as the ‘eyes of the gods’—intermediaries between the physical and spiritual worlds.²⁰ Their work encompasses a wide range of roles, including treating illnesses using herbs and rituals, offering spiritual protection through charms and amulets, and performing divination to uncover hidden causes of misfortune or illness. These practices are rooted in a deep understanding of both the natural environment and the spiritual forces that shape human life. The knowledge native doctors possess is often passed down through generations, either through formal apprenticeships or spiritual encounters. This includes extensive knowledge of medicinal plants, ancestral deities, ritual processes, and the social structure of their communities. Their expertise often extends beyond medicine to include practical skills like farming or crafting, which are sometimes intertwined with spiritual practices.

In the context of legal proceedings, native doctors can play a crucial role in providing evidence or context rooted in Indigenous Knowledge Systems. Their insight into local customs, beliefs, and spiritual causes of events can help courts understand culturally specific practices, especially in cases involving customary law. By offering interpretations grounded in traditional knowledge and spiritual understanding, they can assist the court in making informed decisions that respect cultural integrity. Importantly, the divine or spiritual aspect of their knowledge does not disqualify its value; rather, it highlights a different but valid epistemology. In societies like Nigeria, where legal pluralism exists, the contributions of traditional healers are not only culturally significant but can also help bridge gaps between formal legal systems and indigenous norms.

Opinion Evidence: Opinion evidence refers to what a witness thinks, believes, or infers concerning facts in dispute, as opposed to direct evidence based on their personal knowledge of those facts. It is essentially a conclusion drawn from the evaluation of certain circumstances. Under Section 67 of the Evidence Act,²¹ opinion evidence is generally inadmissible. This is because it is the exclusive role of the court to draw inferences and reach conclusions from the facts presented. The law does not permit witnesses to perform this judicial function. This principle was affirmed in *ANPP v. Usman*,²² where the court held that ‘witnesses are called only to state facts and not to draw inferences from facts.’ Allowing witnesses to offer opinions would blur the line between the roles of the witness and the judge. However, the law provides an exception for opinion evidence in some circumstances. For instance, opinions from experts—individuals who, through practice and experience, have acquired special knowledge beyond common understanding. According to Black’s Law Dictionary, such expert opinion is admissible when it helps the court understand technical or specialized matters.

Expert Witness: An expert witness is someone whose specialized knowledge, skill, or experience enables them to provide opinions that assist the court in understanding complex or technical matters beyond the knowledge of an average person. Unlike ordinary witnesses, who are limited to stating facts they personally observed, expert witnesses are permitted to offer opinions based on their expertise. The Nigerian courts have affirmed this distinction in several cases. In *AG Federation v. Abubakar*,²³ an expert was defined as any person specially skilled in the field in which they give evidence. Similarly, in *Seismograph Service v. Esiso Akpororo*,²⁴ the court noted that an expert is someone who gives opinions on matters that lie beyond the knowledge of the untrained. This includes fields such as medicine, forensics, engineering, and other areas where specialized knowledge is necessary for the court to draw informed conclusions. However, expertise is not limited to formal education or professional qualifications. In *Damina v. Akpan*,²⁵ the court emphasized that what qualifies a person as an expert is not merely credentials, but their actual experience and skill in the relevant field. This position was also reinforced in *AG Federation v. Abubakar* (supra), where the court stated that the expert must be competent, diligent, and specially

¹⁹ Iroegbu, Patrick E, ‘*Healing Insanity: A Study of Igbo Medicine in Contemporary Nigeria*’ (Xlibris Corporation, 2010)

²⁰ Nwakwudo, Arinze Emmanuel, ‘An Evaluation of Igbo Traditional Priesthood and Christian Priesthood’ *Department of Philosophy Faculty of Arts, Chukwuemeka Odumegwu Ojukwu University Igbaram Campus* (2024) <<https://www.academia.edu/resource/work/125272567>> accessed 2nd June 2025

²¹ Evidence Act, 2011 (as amended 2023)

²² (2008) LPELR-3786(CA)

²³ [2007] 10 N.W.L.R Pt. 1041

²⁴ (1974) 6 S.C. 119 at 136

²⁵ (2011) All FWLR (pt. 580) 1298.

skilled in the area they testify about. While the opinion of an expert is admissible, it is not automatically accepted without scrutiny. Courts are expected to assess the credibility and relevance of such evidence. As the court observed in *Ize-Iyamu v. Alonze*,²⁶ although judicial officers are not to accept expert opinions 'hook, line, and sinker,' they also should not unjustifiably substitute their own views for credible and uncontroverted expert testimony.

Black's Law Dictionary adds that expert opinion is that which is given by a person of ordinary capacity who has, through practice and experience, acquired special knowledge beyond the limits of common observation, and whose input is useful in elucidating a matter under consideration.²⁷ This recognition of practical and experience-based expertise opens the door to a broader reflection: *could Indigenous practitioners, such as native doctors, also qualify as experts in suitable contexts?* These individuals are deeply knowledgeable in herbal medicine, spiritual rituals, and communal customs. Their longstanding roles in diagnosing ailments, resolving disputes, and interpreting traditional beliefs demonstrate a form of specialized knowledge that may be relevant in cases involving customary law or cultural practices. Although the Evidence Act does not currently categorize such traditional knowledge within the expert framework, their insights could, in appropriate circumstances, assist the court in understanding facts that are deeply rooted in Indigenous systems. This raises important questions about how the legal system can more effectively recognize and incorporate different forms of knowledge in order to achieve fair and inclusive justice.

Theoretical Framework

Legal Positivism: Legal positivism is a theory that explains law as valid when it is created by a recognized authority through established procedures. It emphasizes that the legitimacy of law comes from its source, such as legislation or judicial decision-making, rather than from moral or customary considerations.²⁸ This view reinforces the centrality of state authority in defining what counts as law. This theory is crucial to understanding why customary and Indigenous laws were marginalized during and after colonial rule. Since these traditional laws were not formally enacted or recognized by the state, they were often dismissed as non-law within the positivist framework. Scholars like Hobbes and Austin argued that all valid law must be deliberately imposed by a sovereign. For Hobbes, even customary rules only counted as law if the sovereign permitted them, implying they were indirectly commanded.²⁹ Austin supported this view by claiming that customary law becomes valid only when it is recognized by the courts, and by implication, the sovereign.³⁰ He explained that the customs which are sanctioned habitually by the courts are therefore law, because the courts are part of the state, and the state tacitly commands what the courts sanction. While H.L.A Hart acknowledged that law is not just about commands from a sovereign, his concept of 'rule of recognition' still emphasized that only rules recognized through accepted procedures by legal authorities are valid law.³¹ Ronald Dworkin later challenged this further, arguing that customary norms, though not recognized by the sovereign, can still influence legal decisions independently, thereby undermining the rigid positivist model.³² In the context of Indigenous legal practices, legal positivism explains the historical and structural exclusion of native customs from formal legal recognition. While these customs may govern everyday realities in many communities, their lack of sovereign endorsement has limited their status within the legal systems. This highlights the need to critically assess how legal authority is defined and which knowledge is accepted as valid.

Legal Pluralism: Legal pluralism refers to the coexistence of multiple legal systems within a single society or geographic space.³³ It is especially common in post-colonial societies, where state law operates alongside customary and indigenous legal systems. Rather than treating law as a single, unified structure, legal pluralism recognizes that different sources of law such as English laws, state legislation, custom, and case laws, can simultaneously govern people's lives. John Griffiths defines legal pluralism as a situation where more than one legal order regulates behaviour within the same social field.³⁴ This means law is not limited to formal state authority but includes other systems people turn to for dispute resolution and order. This coexistence often results in overlapping and sometimes conflicting legal norms. For instance, in Nigeria, both statutory and customary laws

²⁶ (2007)6 NWLR (pt.1024)84.

²⁷ Black, H. C, *Black's Law Dictionary* (11th ed. Thomson Reuters. 2019).

²⁸ Bix, Brian H, 'Legal positivism' *The Blackwell guide to the philosophy of law and legal theory* (2005): 29-49 <<https://onlinelibrary.wiley.com/doi/pdf/10.1002/9780470690116>> accessed 2nd June 2025

²⁹ Hobbes, Thomas. 'Leviathan 1651.' (1987).

³⁰ Austin, John, 'The Province of Jurisprudence Determined' J. Murray, (1832) <[https://books.google.com/books?hl=en&lr=&id=yjXxxaeudhoC&oi=fnd&pg=PR5&dq=John+Austin+-+%22The+Province+of+Jurisprudence+Determined%22+\(1832\)+&ots=9jjWPC_2f-&sig=71Sj9UwULw5CHUp00J9jd8165I](https://books.google.com/books?hl=en&lr=&id=yjXxxaeudhoC&oi=fnd&pg=PR5&dq=John+Austin+-+%22The+Province+of+Jurisprudence+Determined%22+(1832)+&ots=9jjWPC_2f-&sig=71Sj9UwULw5CHUp00J9jd8165I)> accessed 2nd June 2025

³¹ Summers, Robert S, 'Professor HLA Hart's Concept of Law' *Duke LJ* (1963): 629.

³² Dworkin, Ronald, 'Taking rights seriously' (A&C Black, 2013)

³³ Michaels, Ralf, 'Global Legal Pluralism' *Annual Review of Law and Social Science* 5.1 (2009): 243-262.

³⁴ Griffiths, John, 'What is Legal Pluralism?' *The journal of legal pluralism and unofficial law* 18.24 (1986): 1-55.

regulate areas like land ownership and inheritance. These parallel systems may support or contradict each other, creating uncertainty but also offering individuals the chance to navigate different legal paths depending on the issue. Legal pluralism challenges the notion that only state-enacted laws are valid, drawing attention to which norms are recognized and which are excluded. Understanding this concept is vital for effective governance, especially in societies where diverse legal traditions coexist. It highlights the complexities individuals face when navigating multiple legal systems and underscores the need to acknowledge and integrate these traditions in order to promote justice and social cohesion.

Sociology of Law: Sociology of Law focuses on how law interacts with society, emphasizing the real-life application of legal rules and the social forces that shape them. Rather than treating law as a rigid set of rules created by the state, this theory looks at how legal norms operate in everyday life and how people experience and respond to them. This theory is especially relevant to the study of Indigenous and customary law, as it helps explain how such norms continue to guide behaviour in many communities, even when they are not formally recognized by the state. It draws attention to the gap between recognised legal frameworks and the actual legal practices people follow. Scholars like Eugen Ehrlich argued that the ‘living law,’ which refers to the rules people actually observe in their daily lives, can be more important than written laws.³⁵ In many Indigenous communities, customary practices regulate relationships, resolve disputes, and maintain social order, regardless of their formal status. Sociology of law therefore challenges the idea that state law is the only source of legal authority. By focusing on how law functions in practice, the theory supports a more inclusive understanding of law that values Indigenous knowledge systems and local practices. It shows that ignoring these systems can create disconnection between legal institutions and the communities they are meant to serve.

Critical Legal Studies: Critical Legal Studies (CLS) contends that law is not an objective system but one that reinforces existing power imbalances and social hierarchies. The theory suggests that legal rules are shaped by those in power and often serve to protect their interests rather than promote justice for all. Scholars in this movement believe that the law tends to maintain the interests of dominant groups while marginalizing others.³⁶ From this perspective, legal decisions are not purely based on logic or justice but are influenced by deeper structural biases. This critical approach seeks to expose and challenge the power dynamics often concealed beneath legal reasoning. In relation to customary and Indigenous law, CLS questions why certain forms of knowledge and authority, such as Indigenous customs, are excluded from formal recognition. It draws attention to how colonial and post-colonial legal systems hold Western norms as dominant while dismissing local ones. Through this, CLS demands a critical look at whose perspectives are validated in the law and how reforms can create a fairer and more inclusive legal system.³⁷

3. The Legal and Institutional Frameworks

Legal Framework

Constitution of the Federal Republic of Nigeria 1999 (as amended): The Constitution is the supreme law of the land. Section 1(1) declares its supremacy, stating that it has binding force on all persons and authorities throughout the country. In subsection (3), the Constitution explicitly provides that any law inconsistent with its provisions shall be void to the extent of the inconsistency. This supremacy clause ensures that customary law, like all other laws, must conform to constitutional standards. The Constitution recognizes the importance of customary law and provides for its application within the Nigerian legal system. For instance, Section 21 places a duty on the State to protect, preserve, and promote Nigerian cultures, which inherently includes customary law practices. This demonstrates an acknowledgment of Nigeria’s legal pluralism. Additionally, the Constitution provides for courts with jurisdiction over customary law matters. At the federal level, Section 265 establishes the Customary Court of Appeal of the Federal Capital Territory, while Sections 280 to 282 provide for the establishment of State Customary Courts of Appeal. These courts are vested with appellate and supervisory jurisdiction in civil proceedings involving questions of customary law. Section 237(2) also ensures that Justices with expertise in customary law are included in the Court of Appeal, reaffirming the recognition of indigenous legal norms within the judiciary.

Importantly, the Constitution also sets boundaries for the application of customary law. Section 36(12) mandates that criminal offences must be defined by written law, thereby excluding unwritten customary norms from the realm of criminal liability unless codified. Furthermore, Section 42(1) prohibits discriminatory practices based on ethnicity, sex, or religion. This provision has often been used to invalidate customary norms that infringe on

³⁵ Ehrlich, Eugene, and Klaus A. Ziegert, *Fundamental principles of the sociology of law* (Routledge, 2017).

³⁶ Kennedy, Duncan, ‘Legal Education and the Reproduction of Hierarchy’ *J. Legal Education* 32 (1982): 591.

³⁷ Price, David Andrew, ‘Taking Rights Cynically: a Review of Critical Legal Studies’ *The Cambridge Law Journal* 48.2 (1989): 271-301.

fundamental rights, particularly in the context of gender-based discrimination in inheritance and marriage practices. Furthermore, the provisions in Sections 6 and 36 guarantee access to courts and fair hearing, ensuring that customary courts, while recognized, must adhere to the principles of justice, equity, and good conscience. Finally, Section 315 allows for the continued application of existing laws, including customary laws, as long as they are modified to conform with the Constitution. This means that while customary law remains part of the legal system, it is subject to continuous evaluation and adaptation to align with constitutional values.

Evidence Act 2011 (as amended 2023): The Evidence Act which governs the rules of evidence in legal proceedings across Nigeria, provides specific provisions that allow for the admissibility of customary law and expert opinion. These provisions create a legal basis for individuals such as native doctors to potentially be recognized as expert witnesses, particularly where they possess specialized knowledge of Indigenous customs or traditional practices. Section 18 establishes that where a custom is not judicially noticed, it must be proved as a fact, and such proof may come from individuals with knowledge of that custom. A native doctor, by virtue of specialized experience within a particular Indigenous community, may offer relevant evidence in such circumstances. However, subsection (3) provides a limitation: the court shall not enforce any custom contrary to public policy or natural justice, equity and good conscience. This provision ensures that while customary knowledge is admissible, it must conform to constitutional and moral standards. Section 19 further supports this by making relevant any fact that demonstrates how a particular custom was understood and practiced by those affected by it. This makes it possible for people with direct experience of the custom, such as those who practice or observe it regularly, to help the court understand how it is applied in real life.

When it comes to expert opinion, Section 68 provides that the opinions of persons specially skilled in customary law or custom, science, or art are admissible when the court must form an opinion on those matters. Those persons are legally classified as experts. Further, Section 70 states that in deciding questions of customary law and custom, the opinions of traditional rulers, chiefs, or other persons having special knowledge of the custom are admissible. This gives room for individuals like native doctors, if shown to possess recognized knowledge, to serve as expert witnesses. In this context, Section 175(1) is crucial: it provides that all persons are competent to testify, unless they are unable to understand the questions put to them or to give rational answers due to factors such as age, illness, or similar causes. Native doctors are, by this provision, competent witnesses even if what they testify to is not part of dominant knowledge systems. Their testimony, so long as it is rational and intelligible to the court, can be admitted.

Furthermore, since the Constitution and the Evidence Act both recognize and accommodate customary law within Nigeria's legal system, there is legal ground for courts to admit testimony based on beliefs that are customary in nature. This includes the acknowledgment of the spiritual or divine (within customary law) as factors that can influence social practices. Where a person is shown to possess recognized knowledge of such customs and meets the competency threshold under Section 175, their evidence may, in principle, be accepted by the courts. Beyond the Constitution and the Evidence Act, various other Nigerian laws contain provisions that acknowledge and incorporate elements of customary law and traditional practices, particularly in areas such as land tenure, inheritance, and marriage. For instance, Section 3 of the Administration of Estates Law of Lagos State affirms that the distribution, inheritance, or succession of estates governed by customary law shall remain unaffected by the general provisions of the law, even when such estates are administered under its authority. This recognition ensures that indigenous customs relating to succession continue to operate alongside statutory rules.

Similarly, the Land Use Act, 1978 particularly in Section 6, empowers local governments to grant customary rights of occupancy over land for agricultural, residential, or grazing purposes. This provision reflects an acknowledgment of communal landholding systems and the customary norms that guide land use in many rural areas. The Marriage Act also addresses the recognition of customary law in the context of matrimonial unions. Section 33 prohibits the celebration of a statutory marriage if either party is already married under customary law to someone else. Furthermore, Section 35 provides that while a person married under the Act cannot validly contract another marriage under customary law during the subsistence of that statutory marriage, the Act itself does not invalidate marriages properly conducted under customary law. This highlights the legal acknowledgment of customary marriage as a parallel framework.

United Nations Declaration on the Rights of Indigenous Peoples: The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) serves as a key international instrument that encourages the protection and recognition of Indigenous knowledge systems within national legal frameworks. Although it is not legally enforceable, UNDRIP is meant to be a guide for member states, including Nigeria, to consider when implementing policies and laws related to Indigenous peoples. It reflects international standards and provides an effective structure for promoting indigenous rights. To begin with, Article 2 establishes the right of Indigenous individuals to be free from discrimination, particularly in the exercise of rights connected to their identity. This sets a

foundation for equal treatment in legal settings, including recognition of traditional knowledge and practices. Building on this, Article 5 affirms the right of Indigenous peoples to maintain and strengthen their distinct legal and cultural institutions. This supports the idea that Indigenous systems of knowledge, including those involving traditional healing or spiritual practices, can have a place alongside formal legal structures. Further, Article 8 calls for the prevention of any action that seeks to assimilate Indigenous peoples or undermine their cultural identity. Excluding Indigenous perspectives from legal proceedings, especially where such knowledge is relevant, could be seen as an indirect form of cultural erasure, which this article cautions against.

Article 11 reinforces the right to practice and revitalize cultural traditions and customs, including technologies and ceremonies. When individuals bring such indigenous knowledge to legal matters, particularly in contexts where customary law is involved, this provision provides strong support. Complementing this, Article 12 highlights the right to manifest and teach spiritual and religious traditions. Where such practices form part of the lived experiences or expertise of individuals called to testify, the article affirms the legitimacy of their contributions. Article 15 stresses the importance of promoting dignity and eliminating discrimination against Indigenous cultures. In legal proceedings, this implies a duty to ensure that Indigenous perceptions are not dismissed or undervalued due to cultural bias.

In addition, Article 19 emphasizes the importance of consultation and cooperation with Indigenous peoples before taking actions that affect them. Although primarily applicable to policymaking, it reinforces the principle that Indigenous voices should be heard and considered in all institutional processes, including judicial ones. Importantly, Article 31 affirms the right of Indigenous peoples to control and protect their cultural heritage, traditional knowledge, and expressions of culture—including medicine, technologies, and oral traditions. This supports the idea that individuals possessing such knowledge may be viewed as experts when their input is relevant to issues before a court.

Finally, Article 45 confirms that nothing in the Declaration should be seen as limiting existing or future rights of Indigenous peoples. This emphasises the entitlement of indigenous people to have their knowledge systems respected and considered in various societal institutions, including the legal system.

Institutional Frameworks

The Legislature: The Constitution of Nigeria vests legislative authority in the National Assembly at the federal level and in the Houses of Assembly at the state level. In particular, Section 4(2) and (4) empower the National Assembly to make laws for the peace, order, and good government of the Federation on matters listed in the Exclusive and Concurrent Legislative Lists. These broad legislative powers give the legislature the capacity to enact laws that may recognise or regulate customary practices, traditional knowledge systems, and the evidentiary use of such knowledge in judicial proceedings. In addition, Section 4(6) and (7) grant similar law-making authority to State Houses of Assembly over matters not reserved exclusively for the National Assembly. This enables states to legislate on customary law, Indigenous practices, and the recognition of culturally transmitted knowledge within their jurisdiction. This legislative structure supports the accommodation of customary norms within the legal system, thereby creating opportunity for the recognition and potential admissibility of traditional evidence in formal legal proceedings.

The Judiciary: Section 6 of the Constitution vests judicial powers in the courts established for both the Federation and the States. Subsections (1) and (2) establish that these powers are exercised by courts constituted under the Constitution, while subsection (3) affirms that these courts are the only superior courts of record in Nigeria unless otherwise provided by law. These provisions affirm the judiciary's primary role in interpreting and upholding all laws, including customary law. The judiciary plays a critical role in the interpretation and application of customary norms, particularly when they arise in legal proceedings. Courts regularly consider customary law through evidentiary processes, but such customs are subjected to the repugnancy test—a principle used to assess whether a custom is contrary to natural justice, equity, and good conscience. For example, in *Edet v. Essien*,³⁸ a custom that allowed custody of a child to be transferred based on unreturned dowry was held to be repugnant. Conversely, in *Dawodu v. Danmole*,³⁹ the court upheld the *Idi-Igi* system of inheritance, finding it consistent with the principles of justice and equity. In *Nwude v. Nwude*,⁴⁰ a discriminatory custom preventing a woman from devising property through a will was similarly struck down. Importantly, customary courts are empowered to interpret and apply indigenous customs directly. These courts are often more receptive to traditional evidence and testimonies from individuals familiar with indigenous practices, thereby creating a space for traditional knowledge systems to be heard and considered. At the highest level, the Supreme Court has further shaped the boundaries of acceptable

³⁸ *Edet v Essien*, (1932) 11 NLR 47

³⁹ (1962) 1 All NLR 702

⁴⁰ (2019) JELR 110715 (CA)

customary law. In cases such as *Anekwe v. Nweke*⁴¹ and *Ukeje v. Ukeje*,⁴² the apex court rejected customs that excluded women from inheriting property, reinforcing constitutional values of equality and justice. Thus, the judiciary, through both superior and customary courts, serves as a key institution in determining the validity and admissibility of indigenous knowledge and customary norms within Nigeria's plural legal system.

The Executive: Section 5 of the 1999 Constitution vests executive powers in the President at the federal level and in the Governor at the state level. These powers include the responsibility to execute and maintain the Constitution and all laws enacted by the legislature. By implication, the executive arm is empowered to take necessary actions to ensure law and order within the federation and each state. A practical example of how the executive can influence the regulation of customary practices is seen in Anambra State. In 2025, the Anambra State Government launched a clampdown on certain native doctors alleged to be involved in criminal and deceitful practices, including so-called 'get-rich-quick' rituals linked to 'Okeite'.⁴³ Acting under the established laws and through its executive council, the state government reaffirmed its stance on cleansing traditional medicine of harmful elements. While the government recognizes the value of indigenous healing practices, it draws a clear line against harmful or fraudulent activities.

Interestingly, following investigations, the government also indicated that native doctors found innocent of any wrongdoing could be considered for official engagement. This marked a shift from suspicion to cautious collaboration, showing an attempt by the executive to honour traditions while still following the law. It demonstrates a growing awareness that traditional practitioners, when acting within the bounds of the law, can play constructive roles in state development and community security. This intervention demonstrates how the executive can play a proactive role in curbing harmful practices cloaked as tradition. By regulating and scrutinizing the activities of traditional healers, the government not only upholds the rule of law but also protects citizens from exploitation. These actions could also encourage other institutions like the courts, lawmakers, and traditional leaders to start thinking more seriously about how to work with traditional knowledge, including when and how the views of native healers should be accepted in official settings.

Traditional Institutions

Traditional institutions in Nigeria play a crucial role in the preservation and transmission of indigenous customs, values, and systems of knowledge. These institutions act as custodians of tradition, and they play an influential role in the governance, cultural identity, and dispute resolution mechanisms of many communities.⁴⁴ Traditional rulers, such as Obas in Yorubaland, Emirs in the North, and Obis in parts of the Southeast, are central figures in these institutions. They oversee the observance of cultural practices, control traditional titles and rituals, and maintain a deep connection to the communities. An especially important aspect of their role, often overlooked in formal legal proceedings, is their reliance on indigenous spiritual authorities like native doctors. In many communities, traditional rulers consult native doctors for revelations or their informed spiritual opinions, especially in cases where the root of a conflict is believed to lie beyond the physical.⁴⁵ These consultations are taken seriously, as many community members deeply believe in the existence of spiritual forces influencing events. The opinions or insights offered by these native doctors, whether through divination, rituals, or other means, can shape the ruler's understanding of the matter and, by extension, how it is resolved.

Interestingly, while courts do not rely on spiritual opinions as authoritative evidence, such insights may influence customary legal processes indirectly. In cases where customary law applies, particularly before customary courts, testimonies from traditional rulers or other individuals regarded as custodians of indigenous knowledge can be admitted, not for their supernatural content, but as cultural facts. Courts may consider such beliefs only when they reflect recognized customs, using them to understand how justice is viewed and practiced within the community. Beyond dispute resolution, traditional rulers also act as bridges between the government and their people. Traditional institutions are close to the people and understand their beliefs and way of life. Because of this, they can help guide other institutions like the judiciary, the executive and legislature to pay more attention to the opinions of traditional healers. When these opinions are based on accepted customs, they can help make the legal system more connected to the real lives of the people.

⁴¹ (2014) 9 NWLR (PT 1412) 393

⁴² (2014) 11 NWLR (Pt. 1418) 384

⁴³ The term 'okeite' which means pot of prosperity, is a specific concept within the Igbo culture and it is believed to attract prosperity and foster progress.

⁴⁴ Ayuba Maikasuwa, S. A. N. I. Suleiman, and Muhammed Ohikwo Ibrahim, 'Strategic Role of Traditional Institution in Conflict Prevention and Resolution in Nigeria' *African Journal for the Psychological Studies of Social Issues* 27.2 (2024).

⁴⁵ Locust, Carol, Wounding the Spirit: Discrimination and Traditional American Indian Belief Systems' *Harvard Educational Review* 58.3 (1988): 315-331.

4. Integrating Native Knowledge into Modern Legal System

Courtroom Perceptions and Admitting Traditional Knowledge

In many Nigerian courtrooms, particularly outside the customary court system, traditional knowledge such as the spiritual insights of native doctors is often approached with scepticism or dismissed outright. This stems from the legal system's deep roots in British common law, which prioritizes empirical evidence, written records, and rational legal reasoning over oral traditions and spiritual beliefs.⁴⁶ Legal practitioners trained in conventional frameworks may lack both familiarity and comfort with indigenous systems. As a result, spiritual claims are often misunderstood, trivialized, or regarded as culturally irrelevant to formal adjudication processes. Yet, traditional knowledge remains a core aspect of many Nigerians' lived realities, especially in rural or culturally rooted communities. Historical case law reflects this conflict. For instance, in *R. v Egbuaba Odo*,⁴⁷ some individuals were initially convicted for placing a charm-black powder on courtroom furniture to spiritually influence a judgment. Although the trial judge treated the act as an attempt to pervert justice, the West African Court of Appeal reversed the conviction. It reasoned that holding a belief in supernatural influence is not, by itself, a criminal act unless it results in harmful consequences or interferes directly with court proceedings.

A similar issue arose in *R v Nwaoko*,⁴⁸ where the accused placed a Juju⁴⁹ in the home of his former wife after she failed to repay her bride price. The woman later took her own life. While the court acknowledged the psychological impact of the Juju, it held that there was no reasonable foreseeability that this would cause suicide, and overturned the manslaughter conviction. Critics argue that the court failed to adequately consider how deeply spiritual threats can affect individuals within a traditional African perspective. In *West v. Police*,⁵⁰ the accused invoked a prohibited Juju during a domestic dispute. The court held that her solo invocation did not meet the requirements of the relevant law, which implied a more formal or communal act. This decision has also drawn criticism for failing to consider the socio-cultural impact of such threats within the community. One notable case where traditional belief led to confession is *R v Udo Aka Eka Ebong*,⁵¹ in which a chief invoked a Juju believed to compel a killer to confess. Eleven months later, the accused did confess, and the court ruled the confession voluntary. This case underscores that courts may accept outcomes rooted in traditional belief systems when they align with legal procedures, even if their spiritual origin is not acknowledged as legitimate in itself.

Despite these precedents, the general stance of Nigerian courts remains cautious. In *Re: Opekun*,⁵² the Court of Appeal emphasized that courts are places of law, not venues for validating miracles or magic. The implication is that all extra-sensory claims including those rooted in indigenous spirituality are outside the purview of legal reasoning. However, the strong influence of these beliefs in Nigerian society challenges this rigid separation. Spiritualism, witchcraft, and traditional medicine continue to shape how people understand harm, justice, and conflict. To ignore these belief systems in legal proceedings risks excluding culturally significant perspectives and undermining access to justice for those who rely on traditional systems.

The Evidence Act already permits expert testimony in technical or specialized matters.⁵³ This opens a potential path for recognizing credible native doctors as experts in culturally sensitive cases, especially when their testimony can explain the context, meaning, or psychological effects of traditional practices. Admitting such testimony does not require the court to validate spiritual claims as true, but rather to acknowledge their impact on the minds and behaviours of individuals involved. Ultimately, courtroom attitudes toward traditional knowledge reflect an ongoing struggle between formal legality and the cultural practices. As Nigeria's legal system seeks greater inclusivity, the thoughtful engagement with traditional evidence especially through regulated expert testimony could bridge the gap between justice as defined by law and justice as experienced in local contexts.

How Government and Institutions Engage Traditional Knowledge

The integration of traditional knowledge in Nigerian government institutions has been inconsistent, hindered by legal ambiguity, social scepticism, and fluctuating administrative approaches. However, recent developments in Anambra State provide a useful case study on how executive institutions are beginning to acknowledge and integrate traditional systems of knowledge and spirituality into state governance frameworks. In Anambra State,

⁴⁶ Jackson, John D., and Sarah J. Summers, *The Internationalisation of Criminal Evidence: beyond the Common Law and Civil Law Traditions*. (Cambridge University Press, 2012)

⁴⁷ (1938) LJR-WACA

⁴⁸ (1939) Vol 5 WACA

⁴⁹ A term that is typically related to magical properties dealing with luck, whether good or bad.

⁵⁰ (1952) 20 NLR, 71

⁵¹ (1947). 12 W.A.C.A 139;

⁵² (2004) 6 N.W.L.R. (Pt. 870) 576 at 590 – 591.

⁵³ Section 68 (1) & (2) of Evidence Act 2011 (as amended 2023) It is the author's view that upon a legal and wholistic dissection of this section, native doctors can be regarded as an expert witness and their opinion on their area of native knowledge and practices may be admissible in court.

the recent administrative approach reflects a change in perception towards practitioners of indigenous spirituality, particularly traditional healers and spiritualists, known locally as *Ndi-Dibia*. The Anambra government had adopted a stance perceived by many as hostile toward traditional practitioners, associating them with illegality or superstition.⁵⁴ Similarly, Section 210 of the Criminal Code criminalises harmful or manipulative uses of witchcraft, such as claiming supernatural powers to coerce others, accusing others of witchcraft, or using charms to endanger individuals. While Section 210 does not explicitly criminalize traditional knowledge or all forms of indigenous healing, it reflects the legislature's historical apprehension toward spiritual practices that fall outside empirically verifiable frameworks. The language of the provision which focused on 'witchcraft,' does not clearly distinguish between fraudulent acts and genuine cultural expressions, thereby creating legal ambiguity for traditional knowledge systems. The use of such broad and non-specific terminology places indigenous practices at risk of criminalization, especially in the absence of clear regulatory guidelines distinguishing legitimate cultural practices from harmful or fraudulent ones.

A similar provision was formerly maintained in Canada under Section 365 of the Canadian Criminal Code. Prior to its repeal in 2019, the law provided that 'everyone who fraudulently pretends to exercise or use any kind of witchcraft, sorcery, enchantment or conjuration... is guilty of an offence punishable on summary conviction.' This provision, like Nigeria's Section 210, was intended to curb deception and fraud. However, its application unfairly affected those engaged in traditional and spiritual practices, particularly those from indigenous and immigrant communities. Canada repealed this provision in recognition of its discriminatory impact and the need to respect cultural and religious diversity. The comparison is instructive. While Canada has moved towards legal reform that protects freedom of cultural expression, Nigeria's legislative instruments still leave room for the marginalization of traditional practitioners. However, the evolving policy direction in Anambra State suggests that executive institutions may be leading the way in rethinking how traditional knowledge is engaged, regulated, and integrated into state affairs. The decision to potentially employ traditional practitioners indicates a recognition of their value in community security, conflict resolution, and cultural preservation.

Overall, Anambra State's approach illustrates how government institutions can engage traditional knowledge in a manner that respects legal standards while acknowledging cultural realities. It highlights the importance of clear policy, legal reform, and administrative sensitivity in balancing traditional belief systems with modern governance imperatives.

Admissibility of Paranormal Testimony: Case Studies of Paranormal Experiences in Court

Courts across jurisdictions have long grappled with how to treat testimony rooted in paranormal experiences. Although legal systems often emphasize rationality and empirical evidence, there have been instances where spiritual or supernatural claims have shaped legal outcomes, forcing courts to confront the uneasy relationship between belief, perception, and fact. A review of historical and contemporary cases highlights the complex issue of admitting or dismissing such testimony. One of the earliest and most cited examples is the *Hammersmith Ghost case* of 1804 in England. In response to widespread fear about an alleged ghost haunting the streets of Hammersmith, a man named Francis Smith fatally shot an innocent bricklayer, Thomas Milwood, whom he mistook for the ghost due to Milwood's white clothing. Although Smith pleaded guilty to manslaughter based on his belief that he was confronting a supernatural entity, the court rejected this defence. The judge insisted that belief in ghosts could not justify taking a life and instructed the jury to convict either for murder or nothing at all. Smith was found guilty of murder, though public sympathy led to a pardon. This case is legally significant because it highlights the court's rejection of supernatural beliefs as a valid mitigating factor. The courts' position on the nonexistence of ghosts was further affirmed in *Lyon v Home* in 1868.⁵⁵ A wealthy widow gave a large amount of money to a spiritual medium who claimed to speak with her late husband. The court cancelled the gift, ruling that the medium had used undue influence over her. Although this was the main reason for the decision, the judges also made it clear that they did not take spiritualist claims seriously. This case set the tone that courts do not consider paranormal experiences as valid or useful in legal decisions.

In contrast, Canadian courts have shown inconsistency in cases involving ghosts, as seen in *Manitoba Free Press Co. v Nagy*.⁵⁶ A woman sued a newspaper for reporting her house was haunted, claiming the article was false and defamatory since ghosts do not exist. However, the Supreme Court of Canada ruled that the article was false, without addressing the question of whether ghosts exist. This ambiguity reflects the courts' discomfort with making definitive statements on metaphysical questions, despite their potential social and reputational impact. A

⁵⁴ This has been codified via the Anambra State Homeland Security Law 2025 Section 18 (Enugu State has equally copied same by presenting similar bill to their House of Assembly) The pending case of *Anambra State v Chukwudozie Nwangwu (Akwa Okuko) & Ors* is apt for this discussion.

⁵⁵ 1868 L.R. 6 Eq. 655

⁵⁶ (1907) 39 S.C.R. 340

similar tension appeared in *Burchill v. Hermesmeyer*,⁵⁷ the case of the ghost who inspired a contract dispute and a fraud claim. Mr. Hermesmeyer sued to recover the money he invested in Mrs. Burchill's corporation. Mrs. Burchill claimed that ghosts, with whom she consulted via a medium, told her there was oil under her land. When no oil was discovered, Mr. Hermesmeyer argued that Ms. Burchill's claim was a fraudulent misrepresentation of facts. The court rejected his argument saying that the existence of ghosts is a matter of belief, not of fact. His claim was, therefore, 'insufficient to form a basis for relief for the plaintiff.' This suggests that while individuals may sincerely believe in paranormal events, such beliefs rarely carry evidentiary weight in court.

In the United States, the case of *Stambovsky v. Ackley*⁵⁸ added another dimension to this discussion. A couple purchased a home they later claimed was haunted, and sued the previous owners for failing to disclose this alleged condition. The court ruled in the couple's favour-not because it recognized the existence of ghosts, but because the sellers had failed to disclose a known issue, which had been widely reported and could affect the value of the property. This decision demonstrates that courts may sometimes treat paranormal claims seriously, not because of their supernatural content, but because of their social and economic implications. The *Greenbrier Ghost* case is often cited as a unique example where paranormal testimony allegedly contributed to a conviction in United States. In January 1897, Zona Heaster Shue died suddenly in Greenbrier County, West Virginia. According to history, Zona's spirit appeared to her mother, Mary Jane Heaster, and revealed that she was murdered by her husband, Edward Shue. Based on the ghostly testimony, Zona's body was exhumed, and an autopsy was performed. The autopsy confirmed that Zona's neck was broken, supporting the ghost's account. Edward Shue was tried and found guilty of murder. He was sentenced to life in prison. While the case's details are intriguing, it is essential to note that the trial's outcome was likely based on the physical evidence and witness testimony, rather than solely on the ghostly apparition.

The Salem witch trials of 1692 to 1693⁵⁹ remain one of the most dramatic examples of the dangers posed by allowing paranormal testimony to influence legal proceedings. In these trials, accusers were permitted to present spectral evidence (claims based on visions and dreams) as legitimate testimony. The trials resulted in the execution of twenty individuals and revealed the breakdown of legal safeguards when courts accept unverifiable and subjective experiences as fact. The trials illustrate the critical need for empirical standards in adjudicating claims, especially when traditional or spiritual knowledge is involved.

The examples demonstrate the evolving and often uneasy role of paranormal testimony in legal proceedings. From complete rejection in English law to partial recognition in Canadian and American contexts, courts have swung between scepticism and reluctant engagement. While respect for cultural and spiritual beliefs remains important, legal systems must prioritize objectivity, fairness, and empirical evidence. As these case studies show, the integration of paranormal claims into legal frameworks poses significant risks unless approached with caution, balance, and critical scrutiny.

5.0 Practical Challenges and Opportunities in Admitting Evidence from Traditional Practitioners

Challenges

- **Lack of Standardized Frameworks:** Traditional practitioners often rely on oral knowledge, spiritual insight, and communal beliefs, which do not align with formal rules of evidence that emphasize documentation, objectivity, and replicability.
- **Evidentiary Thresholds and Proof Requirements:** Courts require evidence that can be tested, cross-examined, and verified. The subjective or metaphysical nature of many traditional practices makes it difficult to meet these standards.
- **Judicial Bias and Cultural Misunderstanding:** There is often scepticism or discomfort among judges and lawyers when dealing with indigenous knowledge, especially when it involves supernatural or spiritual claims. This can lead to unfair dismissal of such evidence.
- **Risk of Exploitation or Misrepresentation:** Without safeguards, individuals may falsely present themselves as traditional experts, which undermines both the authenticity of the practice and the integrity of the legal process.
- **Conflict with Constitutional and Statutory Norms:** Some traditional practices may contradict human rights provisions or statutory prohibitions (like the criminalization of juju or witchcraft practices under Nigerian law), complicating their admissibility in court.

⁵⁷ 230 S.W. 809, 1921

⁵⁸ 169 A.D.2d 254, 572 N.Y.S.2d 672 (N.Y. App. Div. 1991)

⁵⁹ Kučera, Antonín. 'The Salem Witch Trials, 1692-1693.' (2020) <<https://digilib.k.utb.cz/handle/10563/46878>> accessed 2nd June 2025

Opportunities

- **Alternative Forms of Expert Testimony:** With proper verification mechanisms, traditional practitioners can be recognized as expert witnesses in specific cultural or spiritual matters, offering insights that may otherwise be overlooked.
- **Enhancing Access to Justice in Customary Communities:** Recognizing traditional testimony can make courts more accessible to indigenous communities whose norms and dispute resolution methods differ from the formal legal system.
- **Legal Pluralism and Cultural Relevance:** Admitting traditional evidence supports the broader goal of legal pluralism, helping the legal system reflect the cultural diversity of the society it serves.
- **Bridging Formal and Informal Systems:** Opportunities exist to integrate traditional knowledge with formal legal processes, especially in areas like land disputes, inheritance, or cultural rituals, where community customs play a critical role.

6. Conclusion and Recommendations

The relationship between Nigeria's formal legal system and traditional knowledge especially spiritual practices is complicated and shows the conflict between modern law and cultural heritage. This paper explored the challenges of including native knowledge in formal courts. Traditional knowledge is often not accepted as legal evidence even though it reflects the lived realities of many Nigerians. Nigerian courts have usually been doubtful about traditional evidence especially when it involves spiritual or supernatural claims. They have been shaped by colonial legal traditions that prioritize empiricism over belief. Case law demonstrates both moments of reluctant acknowledgment and overt dismissal, reflecting a judiciary that is still grappling with how to address spiritual evidence without compromising legal objectivity. Yet, as shown through examples like *R v Udo Aka Eka Ebong* (supra) and *Re: Opekun* (supra), courts have occasionally recognized the effects, if not the truth, of traditional practices, suggesting that there is room for flexibility and contextual understanding in judicial reasoning. Institutionally, while legislative frameworks such as Section 210 of the Criminal Code reflect lingering suspicion of indigenous spirituality, emerging policies like those in Anambra State show a shift toward regulated inclusion. By proposing that credible traditional practitioners can be integrated into governance, the state acknowledges both the risks and the value of such systems. Comparative insights, such as Canada's repeal of similar anti-witchcraft provisions, underline the need for Nigeria to distinguish between fraudulent spiritual claims and legitimate cultural expression.

Cross-jurisdictional case studies from the United Kingdom, United States, and Canada further highlight the global struggle with paranormal or spiritual evidence. Whether rejected outright as in the *Hammersmith Ghost Case* or cautiously acknowledged for their social impact as in *Stambovsky v Ackley* (supra), courts have shown that belief, though not legally provable, can have real world effects that demand legal attention.

The practical challenges of admitting traditional knowledge into court, such as lack of standardization, evidentiary barriers, judicial bias, and constitutional tensions, are significant but not insurmountable. At the same time, there are real opportunities for reform. Recognizing alternative expert testimony, enhancing access to justice for customary communities, and promoting legal pluralism are some examples. If pursued carefully, these avenues could bridge the divide between formal and informal justice systems in Nigeria. Ultimately, the question is about fairness. A legal system that ignores the beliefs and customs of the people may fail to serve them properly. For Nigeria to have a legal system that is truly fair and inclusive it needs to take traditional knowledge seriously. This means not just treating it as something old or irrelevant but as a real and important part of how people understand justice and solve conflicts. The following measures are necessary:

1. **Develop Clear Guidelines for Admitting Traditional Testimony:** Judicial authorities and law reform commissions should create protocols for identifying and vetting credible traditional practitioners, including standards for when and how their evidence can be admitted.
2. **Judicial and Legal Education on Customary Knowledge:** Judges, lawyers, and law students should receive training on indigenous legal systems, traditional healing practices, and cultural norms to foster greater understanding and reduce bias.
3. **Codification of Certain Customary Practices:** Where feasible, elements of customary law and practice should be documented and codified to enhance consistency and support admissibility in formal courts without stripping them of their cultural meaning.
4. **Use of Amicus Curiae or Cultural Experts:** Courts may appoint neutral cultural experts or amicus curiae to provide context for traditional evidence, especially in cases involving complex spiritual or ritual claims.
5. **Balancing Human Rights with Cultural Recognition:** Efforts to accommodate traditional testimony must be aligned with constitutional protections, ensuring that cultural practices are not accepted when they violate fundamental rights.
6. **Community Engagement and Legal Literacy:** Efforts should be made to educate communities about the legal system's openness to cultural knowledge and the proper channels for presenting such evidence in court.