

**LAW AND PUBLIC MORALITY IN AFRICA:
LEGAL, PHILOSOPHICAL AND CULTURAL ISSUES**

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**at
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By

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Introduction:

I count myself very privileged to participate in this important Annual Conference of experts and professionals and to share ideas on the link between law and public morality from both the African legal, philosophical and cultural perspectives and the contemporary moral and ethical aspects of globalization. I thank the organizers for making this Conference inter-disciplinary in nature. In my view, that is what all good laws exactly require.

Key Terms

Law: Among the many schools of jurisprudence, I use Curzon's Dictionary definition of law as *'the written or unwritten body of rules largely derived from custom and formal enactment which are recognized as binding among those persons who constitute a community or state, so that they shall be imposed upon and enforced among those persons as appropriate sanctions'*.¹

Morality derives from the Latin word **Mos**, plural **Mores** which mean customs or people's values and traditions, people's heritage or ways of life and conduct in a given community. Moral values vary from community to community and from time to time. Among people who share a common heritage or have similar cultures or religious beliefs, some of these values cut across sections of the various communities. Within the societies of Black Africa, there is a shared sense of morality that is similar in many aspects and based on the key concept of **Ubuntu**.²

Public Morality in this presentation is taken to refer to 'the total set of ethical-moral, legal-human rights values, customs or traditions which define, describe, promote and defend a given society's or community's common good, shared values and vision, their public ethos, and the common pursuit of the good in order to achieve their full potential and civilization. Public morality regulates the behaviour and values of both the community and the individual who lives and achieves his or her full humanness within the community.'³

Culture is taken to mean *'the sum total of the ways in which a society preserves, identifies, organizes, sustains and expresses itself'*.⁴ Culture can also be defined as *'the sum total of the values a particular society cherishes and by which its members want to identify themselves and be identified by others'*.⁵ These common values include among others: history and language; rites, rituals and ceremonies; wisdom, philosophy and worldview; religious beliefs and morality; ancestors and leaders; signs and symbols;

institutions of family, clan and society as a whole; law, the legal system and the indigenous skills and technologies; education and leadership.

Law and Public Morality: From the above descriptions it appears clearly that both the law and public morality do regulate the relationship between individuals and between individuals and the community or the State. Morality also deals with the way an individual should conduct himself/herself in the community. Public morality and the law should more or less play the same role in society and one ought to be intrinsically integrated within other, thus creating the necessary harmony.

The tension between the Law and Public Morality in Africa today

Often times, however, the law seems to be divorced from public morality. In the Common law tradition, the law seems in my view to concentrate on minimizing the **harm** that an individual may cause to another individual, while paying less attention on the **harm** done by the individual to the community as a whole and to the future of that community or state. Contemporary law in Africa, in following that tradition is perceived as primarily protecting the individual and his or her private interests rather than equally emphasizing the protection of the good of all in the society or community.

Public morality in Africa, on the other hand, is based on a strong **sense of shame** for the individual who acts or behaves contrary to the common good of the community and its values. It is founded on the philosophy: **We are, therefore I am.**⁶

How do we then relate law to public morality and the individual's freedom in moral matters and the community's public morality? Laws in some Developed Countries are tending to completely deny the existence of public morality or perceiving such morality as an infringement on the individual's free moral choices. In most African countries because of the different people's worldview, the law has not yet come to such extreme views of public morality.

The relations between the law and public morality which I support in this paper, has many advocates both from outside Africa and within Africa itself. According to one German philosopher, Gustav Radbruch, after experiencing the Nazi tragedy was of the view that 'the fundamental principles of humanitarian morality were part of the very concept of legality and that no positive enactment or statute, however clearly it expressed and however clearly it conformed with the formal criteria of validity of a given legal system, could be valid if it contravened the basic principles of morality'.⁷

The above principle is what African cultures embrace in emphasizing morality more than the laws. Moral formation in Africa is given to children right from the tender age in order to acquire the habits, attitudes, beliefs, skills and motives that enable a human being to fit into the community. Each and every aspect of life contributed to the moral formation of an individual. An individual lived in and was part of the community and it was everyone's duty to uphold the community's values. Morality was and still is part and parcel of the community.

In traditional African societies, one finds that morality permeated every aspect of life and this had to be reflected in the laws. Laws, as we know them today were unknown and a

society's code of behaviour, albeit unwritten, was deeply ingrained in every member of that society and this is what curbed vices and other improper behaviour.

Morality, as understood in the African world-view was law in a sense. Although Austin argues that law is a command of the sovereign backed by a sanction and that since moral rules are not sent by men as political superiors and therefore not commands of a sovereign, and that they are not clothed with legal sanctions and they do not oblige legally the persons to whom they are set, they do not amount to law.⁸ In the African societies, there is no clear-cut distinction between law and morality since the rules of conduct did in a way amount to law. Breaking them meant isolating oneself from one's community and the society was such that one could not exist outside a community. That is why you find that banishment or exclusion of one from his or her community was a heavy punishment that no one wanted to be visited upon them.

In modern African societies, the situation is different. The society is run according to the laws and in Uganda the hierarchy of the laws is as laid out in Section 14(2) the Judicature Act, Cap. 13, Laws of Uganda 2000 (Revised edition). These are:

- i) The written law;
- ii) The common law and the doctrines of equity;
- iii) Any established and current custom or usage; and
- iv) The principle of justice, equity and good conscience.

Customary law is only applicable **in so far as it is not repugnant to natural justice, equity and good conscience and not incompatible either directly or by necessary implication with any written law.** However, it should be noted from some decided cases that what was deemed as natural justice, equity and good conscience was what the colonial masters considered as such and it had completely nothing to do with what the Africans considered as natural justice, equity and good conscience. This is simply because African cultures and customs were considered as primitive and barbaric, regardless of whether they were good or bad. True some customs and laws were cruel, but these would have been done away with while the good ones were preserved. Written laws were thus put in place and these were also supposed to set the moral standards in the society.

Lord Devlin Patrick, argues that *'there is a public morality which provides the cement of any human society, and that the law, especially the criminal law, must regard it as a primary functions to maintain this public morality'*.⁹ Looking at our criminal laws as laid out in the Penal Code Act various offences are provided for. Although it could be argued that it does regulate on morality, for it lays down 'Offences against Morality', which include rape, elopement, indecent assaults, defilement, detention with sexual intention, prostitution, abortion, unnatural offences and incest; these are mainly sexual offences or offences related thereto.

It is quite evident that the law does reduce the concept of morality to just one small aspect. This narrow interpretation of morality could be a result of importing the foreign laws wholesale without the full involvement and participation of the people who are to be affected by these laws.

It is my argument that although, morality as understood in the traditional African sense has been prevailed over by the written laws, these laws do not adequately define what public morality is and neither do they regulate upon morality in its entirety, hence there is a need to revisit our cultural or traditional norms and values in which morality was treated in a holistic approach and each person was compelled to live in accordance with the moral standards of that person's community.

The Central Problem

In many African countries there are still many laws in the Statute books that are a legacy of the colonial masters during the era of domination over and discrimination against the African 'natives'. In these laws the Africans generally played no part in their making. The aim of the laws was to subject the Africans to domination and control. These laws were not based on the public morality of the people governed. Even in the post-independent Africa since the early 1960s, many laws have been conceived, drafted and passed by legal experts, government and all types of Parliaments and Military Juntas without involving the people targeted. This non-participation and non-involvement in law making by the people the laws are meant to serve is the root-cause of the dangerous gap between the law and public morality. **Can the newly established National Law Reform Commissions in Africa successfully solve this major problem?**

On the relationship between the law and public morality: the crucial question is: **should the law determine what public morality is or should public morality determine what the law should be?**

What is likely to happen if the law in contemporary African States continues to ignore or underestimate the power and influence of the culture, morality, values and the common good of the people for whom the law is made? The people are likely to also ignore, undervalue and undermine the law in which they never participated and which to them appears to be both foreign and irrelevant to their worldview and philosophy of life.

The new laws being contemplated in the light of many aspects of globalization greatly challenge all legal experts, the Law Reform Commissions and African Parliaments to fully ensure that adequate consultation and scientific study of people's public morality are made so that these laws are in conformity with people's centrality of the human person, the community and the most cherished values on which African societies have been founded, nurtured and developed.

Main arguments

It is argued, in the **first** place, that the long history of humanity in Africa, the scientifically accepted Continent of origin for **homo erectus**, **homo habilis** and **homo sapiens** during an evolution of more than four million years,¹⁰ clearly proves that indeed Africa has had a long history of human culture and history, morality and law, legal system and other social systems which have allowed it to grow, protect and promote human life in the most hostile environment and extend the gift of human life to all other Continents of the world. This unique contribution of Africa can never be fully appreciated without at

the same time appreciating those values, norms, morality and worldview that have enhanced human life and created the necessary relations for survival and development.

The **second** argument is based on common sense, daily experiences and scientific philosophy. All the three agree that no one can love and own what one does not know or what is not related to one's worldview. This is the universal principle of education: beginning from the known to move to the unknown; from the critical study of the concrete reality to move to the desired new vision. Unless legal experts and law-makers dedicate themselves to a serious study of African societies and their cultures, and begin from there to conceive of laws to be made, public morality will hardly ever be intrinsically integrated into our African contemporary laws.

The **third** argument is based on cultural exchange, culture enrichment, whenever one culture comes into contact with another. The Ganda philosophy teaches: **Wisdom is like fire, when it is extinguished in your home, you get it from the neighbour.**¹¹ Borrowing wisdom or in this respect laws and aspects of foreign legal systems is regarded as a positive move. For there is no culture that is so perfect that it cannot learn from other cultures; as there is no culture that is so poor that it cannot teach anything positive to other cultures. But the same Ganda philosophy cautions: **A stick in your neighbour's house can never kill a snake in your house.**¹² While positive borrowing is encouraged, the ownership of all that is essential to protection of human life is emphasized as a must for every individual, family and community. **Fourth**, where dualism or dichotomy exists, as it does in the tensions between the modern and traditional legal systems in Africa, people can never live an integrated existence and a united personality. They move from one legal system to another as circumstances dictate or favour them and their interests. This explains why to many rural Africans, the custom, tradition, local moral code and taboo is often considered to be of a higher value and status than the modern law or even a national constitutional provision.¹³ This is what has happened to most of the Nomadic peoples of Africa and several other African societies who continue to violate with impunity many State laws which they regard as irrelevant to them.¹⁴ What is experienced in the dualism of law, is also evident in the dualism of medicine and medical treatment (modern and traditional) and in the practice of religion (Islam or Christianity and African traditional religion). In each case the major challenge is to enable an African to live and be **truly modern and truly African.**¹⁵ The day this critical synthesis will be achieved, that will be the day the deadly dualism or dichotomy will be erased away. This task is extremely challenging to all concerned.

The **final** argument concerns aspects of ethical and moral issues being advocated, done and sold to the 'global village' by contemporary globalization. These issues are highly controversial but effectively promoted by the modern unprecedented communication technologies. They are neither based on God's laws as known from time immemorial nor on the principles of **Natural Law** as developed by most renowned philosophers, ethicists, moral experts.¹⁶ They are rather based on **ethical and moral relativism** and exaggerated and unguided sense of freedom for every individual person to do what he/she feels, wants, or desires. I do not know how the African legal experts, leaders and law-makers are planning to make relevant and appreciated laws on these controversial issues brought by globalization, without a deep study of the African public morality. These elements, most negatively perceived in the African worldview and

vitology¹⁷ include, among many: free abortion, legalization of homosexuality, lesbianism, bisexuality and same-sex marriages, cloning of human beings and other beings, promotion of Genetically Manufactured foods and seeds, free choice of sex-change, fertility clinics for **in vitro** children without a father or family, the surrogate 'mothers' hired to beget children for others, and the entire range of pornography and the abuse of the human body in the name of freedom for the individual.¹⁸ My only hope is that when time comes to discuss, draft and make laws on these very contentious issues, mere borrowing of already made laws in the Developed Countries will not be followed. The African people will be fully consulted and their public morality respected so that the common good, the good of the African family, community and society will serve as the fundamental basis of such laws.¹⁹

An African Legal System: Although Black Africa consists of thousands of ethnic communities, when several case studies of the various communities will have been done on the legal system, it is most probable that we shall be able to talk about one Legal System in Black Africa, as it has been the case in the intensive study of African Traditional Religion.²⁰ The main reason for this hope is the strong uniting and central worldview of Black Africans.²¹

The major concerns and concepts of the African legal system have been and still are:

- (1) How to mete out justice and in the quickest manner possible.
- (2) How to use the wise and impartial elders as the judges and the jury.
- (3) How to prevent greater conflict and revenge in society or between communities.
- (4) How to determine the punishment in relation to the crime committed, as viewed in their particular worldview.
- (5) How to reconcile the conflicting parties, the offender and the victim and re-establish harmony which had been destroyed or undermined.
- (6) How to take extra care to ensure that full justice is done to the poor and the most vulnerable of society, whose voices were not often heard in society.
- (7) How to protect and defend society's moral ethic and cohesion through either remedial or deterrent punishment.
- (8) How to use exposure to public shame, the displeasure of the deities and ancestors to keep all members of society focused on its moral ethic and codes.

It can be easily deduced from the above that in the African legal system, law and justice, law and social justice were intrinsically united. Condemnation/sentencing was often also united to reconciliation. This is the origin of the term **Kitewuluza** (court) in Buganda. The concept of **Kitewuluza** is to enable and encourage the victim and the offender to say all that is in their hearts and for the wise judges and jury to listen attentively and ask questions and at the end reconcile the two. In the African legal system issues of contention between husband and wife or wives, between parents and children, between neighbours and between clansmen and women and among relatives were usually settled through **mediation** to ensure full reconciliation. Disputes between two communities or ethnic groups were settled through **negotiations** to allow harmony to be restored. Issues of offence to the ancestors and the deities were settled through **reconciliation** and religious rituals, again to re-establish the harmony necessary for the well-being of the community. Issues of land and other types of property were settled

through **arbitration** by those who were experts in this field and those who knew best the two contending parties.²²

The above to me are some of the basic moral values that exist in the African legal system but which until recently have never been taken very seriously by the modern and foreign legal system. Thus the need for serious fusion of legal systems, choosing the best in each and integrating it together to form one legal system appreciated by the African people.

African culture as dynamic

As I mentioned before in laying the arguments, African culture, just like all other cultures, has never been **static**, as some people tend to think. Culture grows in history as people meet and re-adjust to new challenges and demands. African culture has always modified its tenets and ways of operation and life whenever it has come into contact with other cultures, challenged by all aspects of modernity, both from within and from without and when informed by new knowledge and discoveries. The contemporary African culture of the 21st Century cannot be the same as that of the early 20th Century. When integrating values or systems, the African traditional culture is only a source. The target must be the examination of the contemporary African culture as still lived and valued today. No one is advocating going back to African archaic laws, already discarded laws or in today's world, irrelevant laws. **The challenge is to examine the past for a more critical study of the present in order to make laws for the best future of Africa.**

Continuity and discontinuity: Four Options

In the dynamics of change and adapting to the existing contemporary world, the African people; the owners of each particular culture, ought to make a critical analysis of their culture and reach normally four major decisions. **First**, they should find out their basic values which when challenged by contemporary society and new values, they can and should remain as they are, because they are always good, just to all, true and noble. They do not contradict fundamental human rights, they only enrich them. Such values are summarized in **Ubuntu**, being a truly African human person and doing only that which a truly African person is expected to do to another human person. Ubuntu includes the values of greeting everyone, sharing, generosity, hospitality, good manners, respect and protecting one's dignity and others' human dignity. **Second**, the community also finds out the values and practices which in the contemporary society and world need **modification or purification**, sometimes substantial and in others simple, in order to fit well in society today. These practices are mainly found in African taboos, which in the absence of institutionalized prisons, served as society's deterrent measures to protect the community's moral ethic. The taboos were full of the moral don'ts. Do not do that; if you do this, that will happen to you! There is no need to continue educating people on the basis of fear. People now, young and old need clear explanations and conviction. **Third**, the community finds out some few values and several practices they once cherished now needing **substitution** with new values and practices. For the African Christians the former value of polygamy is replaced by the new value of monogamy. The former value of widow-inheritance in some African

societies is substituted by the modern value of protecting and respecting her property and her freedom without any brother of the deceased husband 'inheriting' her as a wife. **Fourthly and last**, the community finds a few formerly recognized values and many of the practices which in contemporary society must be **fully abolished and without any substitution** because they were based on lack of knowledge, absence of interaction with other cultures and unfounded fears. These include, among many, the practice which was widespread especially in West African societies of killing or abandoning newly born twins as a bad omen and harmful event to the family and relatives; revenge based on the principle of tooth for tooth, eye for an eye, loss of a human life for another human life.²³

It is my considered view that if our modern African States invested adequate human and financial resources in enabling each ethnic group within it to seriously carry out the above exercise, a very fertile ground would be established for the amicable fusion of the African and the modern legal systems and with the general consensus of the local people. Given its importance, this exercise would not be too expensive in making various ethnic groups own the new laws being proposed and being made. To fuse or integrate the two legal systems in Africa, traditional and modern, demands wide and serious consultations with each ethnic group within any given African State or Nation. In Uganda the Constitution names only 56 ethnic groups.²⁴ A well designed programme of working with each group for one year would yield tremendous results on the way forward for the law-makers now and in the future.

Fragmentation as a major weakness of Africa

While many societies in Europe, China and Japan, to mention but a few, have proved strong in building contemporary laws on the key aspects to their public morality and civilization, Africa appears weak in this respect, mainly due the serious fragmentations in its tragic history and existence. These fragmentations have weakened the sense of the common good, the common ethos and morality and the common heritage of values. In making laws for African states, this factor of fragmentation should be seriously taken into account and addressed.

For more than 400 years (from 1480s to the 1900s), Africa was deeply fragmented by the inhuman and peculiar institution of the slave trade, one of the most negative movement of globalization in modern history. As that was ending, Africa was fragmented by the movement of colonialism, particularly from the Berlin Conference of 1885. This brought in the fragmentation built on the tension between the colonial laws, legal system and the African morality and legal system. Africa is fragmented by the numerous ethnic groups within each sovereign state; by numerous religious and political groups; by the 25 years of the contemporary capitalist globalization based on free market and by the pandemic of HIV and AIDS which has created many child-led families within the region.²⁵

This predicament of Africa has weakened and undermined the once very strong sense of morality, Ubuntu, tradition and the common good. In the now fragmented African societies, it is no longer easy to define common values. The tragic events, dictatorship and civil or inter-state wars that many African countries have experienced since

Independence have also negatively affected the minds and sense of morality among very many people. The violence, for example, witnessed in Uganda during the reign of Idi Amin (1971-79), Obote II (1980-85) and the current war in the North of Uganda since 1986 have all left a sub-culture of violence among many of us, Ugandans. Violence is not simply in the act of carrying out acts of violence but also in seeing dead bodies along the roads, seeing torture, harassment and domestic violence. In making laws against violence, the ill-effects of our past must be taken into account. Such laws must be accompanied with a strong and effective movement of moral rehabilitation. What is said about Aminism in Uganda and its effects on people's morality can equally be said about the effects of wars in the Sudan, Angola, Mozambique, South Africa, Zimbabwe, Liberia, Sierra Leone, Algeria, Somalia, Congo (Zaire), Burundi, Rwanda, Somalia, Guinea Bissau, Nigeria, to mention but a few.

What sources form the morality of people in Africa today?

While many rural based Africans, members of ethnic minorities and particularly the nomadic people may respond to that question citing traditional customs and traditional religious beliefs as the major sources of their morality, many other Africans who have been urbanized, live in a multi-ethnic community and actively engage in modern commercialization may respond differently. For some, the newly embraced religions: Islam or Christianity is the major source of their morality. Many of the young Africans find the radio and the print media, the Internet and the 'global village' as their main sources of morality today. The existence of these two groups of Africans is a major challenge to the law experts and law-makers in present day Africa. I have curiously watched some young African men and women watching the soccer competition between two English football teams: Arsenal and Manchester United. None of them had ever been to England but the enthusiasm with which each side supported its favourite team overwhelmed me. The supporters of either team would easily revert to physical violence over any negative remarks by a spectator on their favourite team or player! This is when I fully realized the impact of the so-called global village. These youths are fully living in Uganda but their minds and hearts, as far as football is concerned, are an integral part of England! Through the Internet and satellite TVs, New York is brought to several African villages! The crucial question is: **how can the legal experts and law-makers in Africa adequately cater for these two very different groups of Africans today?**

Mainly because of this fragmentation, the contemporary African society does not take the current economic immorality and crimes which involve fraud, embezzlement of public funds, corruption and abuse of office seriously. Many people instead tend to 'praise' and protect their own relatives and friends who use those economic crimes to uplift their own areas and people. Public morality in this very important aspect is very weak in Africa.²⁶ Laws therefore which address this large aspect have to be extra strong in order to touch the minds and hearts of the people basing on the traditional values of honesty and integrity which must extend to the entire spectrum of economic and political accountability and transparency.

POSSIBLE PARADIGMS OR MODELS IN MAKING RELEVANT LAWS INTEGRATED WITH PUBLIC MORALITY FOR AFRICA TODAY

I wish to share with this august assembly five models or paradigms which may be considered in making laws for contemporary Africa, laws that can have proper relations with public morality and which can be applied in an integrated legal system.²⁷ My hope is that this Conference may come out with its own model which respects the African people and their cherished moral values and conforms with the International Human Rights Standards.

1. The mind-liberation model in respect to African Culture

For over a Century many of the African cultural, moral and religious values have been undermined and held in contempt by many of the western educated African elites, including many legal experts. If a healthy integration of what is truly African and positive is to be integrated with what is truly human and modern, there is need for the liberated minds, attitudes, devoid of prejudice and contempt. Once this liberation is achieved among those who propose the law, draft the law and discuss and pass the law in Africa, then the laws made will positively integrate what is best in the African values and worldview. To achieve this model, serious study of African history and values is much needed. The proper knowledge of Africa and the Africans, both past and contemporary, will lead to commitment for better laws which adequately respect Africa, the Africans and their cherished positive values. Should the negative attitude of much of what is authentically African remain in the minds of Africa's law-drafters and makers, no serious development in the laws of African States will ever take place.

2. The Translation Model

This is the model which has been mostly followed both in the colonial and post-independent Africa. Law-drafters **borrow wholly** the law made in a foreign country and introduce it to an African State. They make some cosmetic changes as to the names, places, dates etc. to make the foreign law look local, but keeping all or most of the content intact. This Translation Model begins from the foreign law and applies it to the African State. This model in my view does not do justice to Africa. It needs very serious discussion in the plan for the way forward of the law and legal system in Africa. **Mere copying** from other Continents can hardly provide an answer for Africa's problems. The reality, problem and understanding may be different. African problems need African deeply thought-out solutions. Africa should avoid the **whole-sale borrowing model**.

3. The Anthropological Model

This model is the opposite of the previous one. It begins with the study of the Africans and all their values, wisdom and philosophy, law and morality and then it reflects on other people and their laws in order to come up with laws most relevant to the Africans. This model, in my view, is most important. If well followed, it has the power to produce relevant laws for the Africa of today. Such laws in turn may assist other Continents, borrowing from what is best in Africa.

4. The Synthetic Model

I have already argued that African States and Africa as a whole is fragmented by many ethnic, religious, political and social groups. In order to cater for all of them in a single law, the synthetic model is the best. Each ethnic group and any other social group is critically studied in view of the issue to be addressed by the new law. The law is then designed to meet the common concerns of all, while at the same time it adequately caters for the interests of each of the various groups. In contemporary Africa where there is no country with only one homogenous group, this model is highly recommended.

5. The Praxis Model

This model obliges all law-drafters and makers to seriously study the practice and concrete reality on the ground and using that to frame a law that is in tune with the reality. If the law-makers were to visit the much congested prisons and find that more than half of the inmates are on charges of defilement, they may reconsider the law on defilement and be able to find alternative punishments instead of insisting on incarceration of all convicts and suspects of defilement.

RECOMMENDATIONS

This paper has argued and therefore recommends that:

- (1) The African people should be empowered and enabled to actively participate in the process of law-making as to ensure that their best interests and values and morality are adequately cared for in every law made and which directly concerns them.
- (2) The process of law-making in Africa should be inter-disciplinary to widen the scope for the various experts in all related fields to express their views and seriously consider the wider consequences of each law being proposed on the public morality of each community and society as a whole, both present and future.
- (3) Minority groups, particularly the nomadic peoples of Africa, who have ignored the modern laws which they violate daily with impunity and have stuck to their traditional customs deserve no use of force but the power of liberating education and well designed consultations to be brought on board.
- (4) Time has come for the African professionals and experts, including lawyers, to become more original and creative in their various fields so as to avoid the temptation of being mainly imitators or copyists of what people in other Continents have thought and come up with for their respective peoples. This originality is what will make Africa contribute richly to the world development of law and to the need to integrate law with people's morality and public morality.

Conclusion

I strongly hope that Africa will continue for a very long time to closely relate the law with morality in general and public morality in particular in order to preserve, promote and protect the **Ubuntu**, the human person, the community and the future of Africa. This debate should be widely launched in Africa in order to receive a clear feedback on the desired relationship between the law and public morality.

I thank you for your attention. Now I await your rich response.

¹ L.B. Curzon (Ed.), **Dictionary of Law** (4th edition.), Universal Law Publishing Co. Pvt. Ltd/Pitman Publishing, New Delhi, India, 1993. p. 219.

² J.M. Waliggo, 'Who is a true African'. a 13 pages paper presented to the International Conference of Kolping at Hoima, Uganda, on 21st November, 2000.

³ This definition or description is the result of a long interview I held with Prof. Emmanuel Katongole, Associate Professor of Duke University in North Carolina, USA on 11th August 2005, at Bugonga, Entebbe. Professor Katongole is a world renown ethicist on African public morality and has published a lot on this subject. Also refer Parrinder, G., **Religion in Africa**, London, Penguin Books, 1969, p. 88.

⁴ Ministry of Gender, Labour and Social Development, Uganda: **Culture Policy**, Final Draft February, 2005, p.v.

⁵ J.M. Waliggo, 'Towards the proper definition of culture', paper presented at the International Conference on African Theologies, Rome, May 21st, 1969.

⁶ Mbiti, J.S., **African Religion and Philosophy**, London: Heinemann, 1969, p. 224

⁷ Hart, H.L.A., **Positivism and the Separation of Law and Morals**, (1958) 71 Harvard Law Review.593-629.

⁸ Austin, I., 'The Province of Jurisprudence Determined' in **Definition and Theory in Jurisprudence**, HART, H.L.A. (1954) 70 L.Q.R. 37.

⁹ Devlin, Patrick, **The Enforcement of Morals**, London, 1965. p.17

¹⁰ John Iliffe, **Africans: The History of a Continent**, Cambridge University Press, 1995, pp. 1-5.

¹¹ **Amagezi muliro, bwe guzikira ewuwo ogunona ewa munno.**

¹² **Omuggo oguli ewa mulirwano, tegutta musota guli mu nju yo.**

¹³ In our present Constitution of 1995, Article Two states the following but which is not followed by some societies and peoples of Uganda:

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- (1) **This Constitution is the Supreme Law of Uganda and shall have binding force on all authorities and persons throughout Uganda.**
- (2) **If any other law or any custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of inconsistency, be void.**

¹⁴ The Nomadic peoples of East Africa, particularly the Karimajong, Pokot, Turkana and the Masai, who continue to follow their own customs in disregard to the modern laws of their respective countries.

¹⁵ AMECEA Catholic Bishops, **Families Truly Christian and Truly African**, 9th Plenary of AMECEA, Gaba Publications, August, 1986.

¹⁶ Thomas Aquinas, **Summa Theologica** (Volume II-English Translation), Christian Classics, Westminster, Maryland 21157, 1161 pages on the crucial questions on human morality and the Natural Law.

¹⁷ Nkafu, Martin, **African Vitology**, Paulines, 1999.

¹⁸ Ryan Patrick, (Ed.), **Challenges to Theology in Africa Today**, CUEA, Nairobi, 2002.

¹⁹ Bujo, Benezet, **Foundations of an Africa Ethic**, Paulines, Nairobi, 2003.

²⁰ Magesa, Laurenti, **African Religion: The Moral Traditions of Abundant Life**, Orbis Books, New York, 1997, pp. 1-29.

²¹ Bujo, Benezet, **Foundations of an African Ethic**, chapter four.

²² Waliggo, J.M. **African skills of mediation, negotiations, arbitration and reconciliation**, API, Eldoret, 2001.

²³ Waliggo, J.M. 'Making a Church that is truly African', in Waliggo **et al** (eds): **Inculturation: Its Meaning and Urgency**, St. Paul's Publications, Nairobi, 1986.

²⁴ The Constitution of the Republic of Uganda, 1995, Third Schedule.

²⁵ Juventus Baita, 'The Church and HIV/AIDS in Africa, South of the Sahara' in **Challenges to Theology in Africa Today**, pp.7-22.

²⁶ Osei Joseph, 'Fraud and Traditional African Ethics' in Gideon Rossouw and D. Carabine, (eds) **Fraud and the African Renaissance**, UMU, 1999, pp.25-42 and Waliggo, J.M. 'The Historical Roots of Unethical Economic Practices in Africa' **Ibid**, pp. 43-53.

²⁷ These models are influenced by Stephen B. Bevan's book: **Models of Contextual Theology**, Orbis Books, New York, 1992.

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