An Indigenous Yoruba - African Philosophical Argument Against Capital Punishment

Dr. Moses Òkè*

* Senior Lecturer, Department of Philosophy, Obafemi Awolowo University, Ile-Ife, Nigeria, E-Mail: rosenhillme@yahoo.co.uk

ABSTRACT
The paper notes that whereas the issue of capital punishment is very old and not alien to any human society, and whereas there is an abundance of literature on Western philosophy of punishment, very little philosophical work on punishment from the African perspective can be cited. By way of filling a part of the lacuna in the literature, the paper examines the Yorùbá culture for its perspectives on the death penalty.

The paper finds in the Ifá Literary Corpus, though implicit, a strong philosophical argument against capital punishment. The argument, explicated and analyzed, turns out to be an introduction of a skeptical epistemological consideration into the debate over capital punishment in a unique way that raises some other jurisprudential issues relating to judicial administration.

The paper concludes that although there may, as would be expected, be other positions on the issue of death penalty in Yorùbá culture, the particular argument examined validly makes its point for the abolition of capital punishment, especially when situated in the context of Yorùbá social ethic, which is essentially communal and humanistic. The enabling cultural context of the Ifá argument against capital punishment was extended beyond its immediate Yorùbá socio-cultural context to the pan-African humanistic social ethic conceptualized in Bantu languages of Southern Africa as 'Ubuntu', thereby giving the argument a contemporary universal relevance and applicability.

1. INTRODUCTION
In contemporary philosophical, political and judicial circles, the debate continues to be lively between those who support and those who oppose the use of capital punishment. In some places, the death penalty has been abolished in deference to the pressure and force of the abolitionists’ arguments. As has been very well put by Owoade (1988:42), the debate over capital punishment, from the perspective of Western jurisprudence, moves in three directions. There are: (i)
the “moral-humanitarian-religious” directions; (ii) “the popular direction i.e. the views, prejudices and superstitions of the man in the street”, and (iii) “the scientific” direction, “i.e. the penological, psychiatric, and sociological views on the subject.”

While there is an abundance of literature on Western philosophy of punishment, very little philosophical work on punishment from the African perspective can be cited. This is not unconnected with the relative nascency of African philosophy as an academic discipline. This late development of philosophy as a distinct discipline that underlies the canonical near-absence of African views in moral philosophy and philosophy of law extends to the view that Africans have little or no reflective ideas of law, except the despotic will of tribal chiefs.

Although the Yoruba in pre-colonial times believed in the sovereignty of their traditional rulers in their respective domains, they also believed that each ‘oba’ (traditional ruler) would ensure that the incidence of any punishment was directly on the offender (that is, as a Yoruba proverb puts it, “iṣakẹ ọ̀ sè ni Ọba n gẹ”, meaning “The finger that offends is that which the king cuts” (Adewoye 1987:77)). In the present era, the government (‘ijoba’, i.e. assembly of chiefs/rulers) can be said to have replaced the solo ‘oba’ in the administration of justice in Yorùbá land, as in other places.

The widespread acceptance of capital punishment for such offences as theft, murder, treachery, and rebellion is very well reported in Yorùbá folklore, particularly ‘Àló’ (Yorùbá folk tales). Many of the Yorùbá folk tales (i.e.Àló) are meant to convey moral precepts, to teach societal norms and etiquettes, to comment on life and living, and to portray the structure of society. Of particular relevance for the present discussion are the ‘Àló Ìjàpá’. These are animal stories, in which ‘ìjàpá’ (the tortoise, believed in folklore to be the most cunning of all animals) is always the focal, often tragic, character. Most of the stories depict possible and actual situations that mirror the society’s experiences of reality and offer occasions for critical reflection on such experiences. Babalola (1973) and Lawuyi (1988) report many of these folktales, which are usually orally given among the Yorùbá. In most of these tales, the ending is the execution, or other severe punishment, of the convicted tragic character, as ordered by the ‘oba’ (i.e. the traditional ruler or king). In the folktales, death by beheading is the usual form of capital punishment.

However, the Yorùbá believe and say further that the execution of convicts was neither for fun nor to provide the king with blood to drink; rather, it was to mark the king’s dignity (that is, as they say, “Iṣẹ ni Oba n fi orí bíbè se, Ọba kọ ní mu ejè”). In other words, it was traditionally believed to be a part of the king’s greatness and absolute authority that he should be able to exercise the power of life and death over his subjects, albeit, on the assumption that the king was infallible. The impression that one might get from this is that the Yorùbá people indigenously did not have any objections whatsoever to capital punishment. It
might thus be supposed that indigenous Yorùbá culture unreservedly or uncritically approved of capital punishment.

The objective of this paper, therefore, is to call attention to a strong philosophical argument against capital punishment in indigenous Yorùbá culture that is still very much relevant in contemporary contexts. In Nigeria, for instance, the debate over the death penalty, especially with the introduction of the Sharia legal system in some parts of the country vis-à-vis the 1999 Constitution of the Federal Republic of Nigeria, led to the establishment of a Presidential Committee to deliberate over it and advise government accordingly. The present argument, when carefully articulated and studied, will be found to be both logically rigorous and philosophically sophisticated, especially when compared with the other arguments in the philosophy of punishment. As is to be expected, however, there could be other arguments for and against capital punishment to be found in indigenous Yorùbá culture that could contribute significantly to the philosophy of punishment.

2. OUTLINE OF THE ARGUMENT
The indigenous Yorùbá argument that is to be articulated herein is to be found in Ifá, the compendium of Yorùbá ancient wisdom and primary culture. It is to be found in that part of Ifá titled Odù Ògǔndá –Ìròsùn. The relevant thematic passage in the Odù, with philosophical import for the present purpose is:

“Orí yéye ní Mòguń,
Kò sè o rò ló pò níbè,
Dá fuń Ògǔndá, tí yí ó peran,
Tí yó féjè yí Ìròsùn lénu’.
Ifá wí pé “Ire àìkú”.
Ifá wí pé “Kéléni ó rùbọ,
Kí won ó má ti òrán mo láisè o”.

(I.e. “There are too many heads
at Ògùn’s shrine [or, in the mythical
town called Mogun.]
Many of the heads are of innocent persons.”
Cast for Ògǔndá,
Who would kill an animal,
And smear Ìròsùn’s mouth with its blood.
Ifá Oracle prescribes a sacrifice, lest
someone is falsely accused and convicted.”)

That is to say that most of those who had been given capital punishment in the community did not deserve to have been executed. This claim is elaborated in the Odù with the following story.
In a certain mythical town there lived two brothers, Ògúndá and Ìròsùn. There were also the king and other townspeople. On the way to their farm each day, the two brothers passed by the shrine of Ògün, which served as the public execution ground, and which was therefore always littered with many human heads. One day as they passed by the shrine, Ògúndá remarked that most of the heads at the shrine were those of persons who were not guilty of any capital punishable offence. His brother objected, arguing that everyone who was beheaded at the shrine must have deserved the capital punishment. The debate between the two brothers continued for a long while, with Ìròsùn always maintaining that ‘to be punished is to be guilty’, while Ògúndá maintained that ‘punishment does not imply, confirm or establish guilt’. To drive his point home, Ògúndá mentally constructed a possible situation in which an innocent person was convicted of a capital offence, as in a set-up, miscarriage of justice, or flawed judicial procedure.

In the story, the king had a favorite pet goat that was treated like a human member of the royal household. It was well fed and given royal respect by everyone in the town. One day, Ògúndá trapped the goat. He waited until night fell and his brother had gone to sleep after getting very drunk. He then slaughtered the goat, letting its blood make a trail to the entrance of his brother’s bedroom where he deposited the dead goat after smearing the sleeping man’s mouth with its blood. He went further to stick the head of the goat in Ìròsùn’s mouth.

When the goat was declared missing the following morning, the king sent his servants out to search for it, vowing that whoever had kept the goat in his or her custody, not to talk of having injured or killed it, would suffer the death penalty. Following a tip-off from Ògúndá, the king’s servants found the dead goat at the entrance of Ìròsùn’s bedroom. They also noticed the bloodstains on Ìròsùn’s clothes and lips. He was woken up and made to carry the dead goat on his head to the king’s palace where the townspeople and a jury were already waiting for the trial of the alleged killer of the king’s favorite goat. The case was speedily disposed of, as there was an overwhelming preponderance of evidence against the accused, with perhaps none in his support. As already decreed by the king, the penalty was death by beheading at the shrine of Ògún.

As Ìròsùn was being led to the shrine, Ògúndá emerged and sought the permission of the king to say something. He declared to the consternation of the people that it was he, and not Ìròsùn, who killed the king’s goat. He further informed the audience that he had set his brother up in order to prove the point that very many of those previously executed at the shrine of Ògún were possibly innocent of the charges levied against them and for which they were convicted and condemned. By extension, he wanted to show why capital punishment was bad and so should be discontinued in the town.
Ogunda’s submission was well taken by the king and the townspeople, especially because he was a respected and reputedly wise person in the community. The submission also seemed to have agreed with the unarticulated or unexpressed thinking of the reflective members of the community that innocent persons were sometimes judicially executed.

The king, on reflection, was also convinced of Ogunda’s point and he was remorseful for all the death sentences that he had passed and enforced in the past. He realized that another innocent person would have been mistakenly killed if the truth had not been volunteered after his judgment. That is, assuming that the enforcement of the judgment on the convict was to be immediate and irreversible, an innocent person would have been executed while the guilty one went away unknown and undetected. Thus, upon realizing that for a variety of reasons, any case could be proved against anyone, even when the person was innocent of any offence, the king ruled that Ìròsùn, the convict, should be set free. End of story.

The explanatory story, as it has been used in this paper, comes from the published text of Odù Ògúndá in the compressed 16-book format of Ifá Literary Corpus, known as Sixteen Cowries/Eérindínológún (Bascom 1980). There is, however, no significant difference between this documented text and the verbal recitals of the Odù, as given by practicing Ifá Priests using the enlarged 256-book format of Ifá Literary Corpus (comprising the 16 major Odù, known as Ojú Odù, and the 240 derived or mixed Odù, known as Òmọ/Amúlùmálu Odù, wherein the story occurs in Odù Ògúndá-Ìròsùn. However, owing to the multi-dialectical nature of Yoruba language, there may be different lyrical and stylistic renditions of an Ifá text, but the essential content of any Odù Ifá verse is constant among trained priests and priestesses, although the priests/priestesses do not all know the same number of verses of any or all of the Odù Ifá. The portion of the Ifá verse used in this paper (‘Orí yéye ní Mògún; taisè ló jù’) is popular and has in fact become a proverbial saying among the Yorùbá, although it cannot be shown or said that many of those who use the passage proverbially fully comprehend the background story and/or its legal/jurisprudential/philosophical import, because most Ifá priests and priestesses, and others too, do not engage in the philosophical kind of critical reflection on the cultural document that Ifá is (Abímbólá 2006: xix).

Some questions might arise at this point, although they are not the immediate concern of the present discussion. Two of such questions are; what happened to Ògúndá after his confession? What would the king have done if it had been his child or wife or another person that was killed instead of a favorite goat?

Moreover, it needs be emphasized that the philosophical point of Odù Ògúndá - Ìròsùn is not a rejection of punishment for wrongdoing, but a rejection of a particular type of punishment, to wit, capital punishment. Therefore, it is reasonable to say that on abolishing capital punishment, a society will still have
recourse to other non-capital types of punishment that will reasonably allow for future reversal of judgment in the event of credible mitigating evidence. This will be an acknowledgement of the fact that an innocent person who could not prove his or her innocence now, for one reason or the other, might yet be able to prove it or have it proved in the future. In such cases, the innocent recipient of punishment would have suffered only for his or her inability to establish his or her innocence, which is a duty to one’s self.

Although the appellate judicial system offers some hope, there is no guarantee that every innocent convict will be able to prove his or her innocence at the appellate levels of any judicial system, especially in the case of especially vulnerable convicts such as the drunken Íròsùn.

3. PHILOSOPHICAL ANALYSIS OF THE ARGUMENT

Ọgúngá - Íròsùn emphasizes the ever-present possibility of error in the judicial process. It demonstrates the theoretical possibility of justice being miscarried on every occasion. The Odù introduces an aspect of epistemological skepticism into jurisprudence. It is based on the thesis that we cannot be absolutely certain (in the sense of having had all the relevant evidence, such that all reasonable doubts have been eliminated) of any claim or truth that concerns matters of fact and existence. In addition, it shows that with respect to the facts of a case, there is no theoretical limit to relevant evidence in law (Ọkè & Amodu, 2006: 160). Hence, every judgment must leave room for possible reversal without extra loss to the convict in the event of possible future exonerating evidence. Such a reversal will not be possible where the convict had already been put to death. Therefore, in the indigenous reflective thought of the Yorùbá, as presented in the Odù Ifá called Ọgúngá - Íròsùn, capital punishment is not the best option and should be abolished, no matter how grievous the alleged offense.

Although the argument against death penalty in this paper is based on a passage from the sacred text of Yoruba culture, the argument, in order for it to be plausible, neither requires nor includes reference to the will or command of a deity, or some other religious doctrine or injunction, such as that the death penalty should be abolished because God or some other tenet of religion forbids it, or that divine wrath would befall whoever applied the death penalty. Rather, by employing “the method of deductive ratiocination of African philosophy” (Okafor 2006:42), it has been possible to articulate a non-theological and a non-religious version of an argument against capital punishment from Odù Ifá. In particular, subscription to Yorùbá worldview or religion is not a condition precedent to the appraisal of Ọgúngá’s epistemological argument. In other words, Ọgúngá’s argument against the death sentence can subsist without loss of plausibility outside any particular religious or metaphysical context. The argument articulated from the story rests entirely on human reason and empirical observations by persons (here represented by Ọgúngá and his brother, Ìròsùn - both of who were described as princes - in a specified ancient human community called Mòguń). In
this regard, it is to be noted that Ifá is not exclusively a religious text. As remarked by Maulana Karenga (1999: iii):

The Odù Ifá is a corpus of sacred texts designed essentially to answer questions of human life through the process of divination. But as Awise Wande Abimbola has pointed out in his seminal works on the Odù, they contain a wealth of knowledge and teachings in the realm of various fields including art, literature, medicine, history, religion and ethics.

Odù Ifá has also been described as a repository of knowledge and an encyclopedia of Yorùbá culture (Makinde, 1983), and as “the ancient wisdom’ of the Yorùbá people (Makinde, 1985: 58). In the view of Kola Abímbólá (Abímbólá 2006: xviii), Ifá is the “main indigenous sacred Text” of the Yorùbá, which “many specialists within traditional (and contemporary) Yorùbá societies” use in “a hermeneutical manner” to produce “cultural philosophy” when “they interpret, analyse, evaluate, and comment on the poems contained in the Odù Ifá in a critical and reflective manner”. The perspective of each specialist will therefore determine his/her focus of engagement with the “cultural ‘document’”. Kola Abímbólá’s focus on Ifá as “the sacred Text of Yorùbá Religion” (ibid; 28), for instance, was influenced by his viewpoint “that we can only truly understand the Yorùbá if we understand the roles of the religious and the spiritual in their culture”. Hence his engagement with Ifá was to “identify the religio-philosophical properties that unify the different manifestations of this culture…the philosophical ideas that form the basis of the practices of Yorùbá Religion in contemporary societies” (ibid: 33). Thus, just as the Ifá Literary Corpus contains philosophical ideas that underlie the practices of Yoruba Religion, so does it also contain philosophical ideas, which could be articulated from it, that underlie other aspects of life, including law, in traditional and contemporary societies. Gbadegesin (1991: 76) is very explicit on this point. He says: “it is true that the most important religious and moral ideas of the Yorùbá are contained in the Ifá corpus. But, as is clear to even the traditionalists, Ifá is not only a religion. It is, as Abimbola puts it, also ‘a literary and philosophical system’”. Abimbola (1971: 73-89) goes further to describe Ifá as “the store-house of Yorùbá culture inside which the Yorùbá comprehension of their own historical experiences and understanding of their environment can always be found”.

We cannot sustain, therefore, with respect to Ifá, the supposition of a necessary connection between every African ethics-related discourse and religion as had been maintained by some notable African scholars. Arguments against the supposition of a necessary connection between religion and ethics in African cultures, and for a humanistic thesis of social ethics in African cultures, had been persuasively advanced by many eminent African scholars. Ögundá’s argument could thus be regarded as a non-religious rational discourse that happens to occur within a particular Yorùbá tradition-protected (sacred) cultural text. As
such, the argument from Ifá could readily find contemporary relevance and applicability in any other cultural context.

In order fully to appreciate the universal relevance and applicability of the Yorùbá indigenous argument against capital punishment discussed above, all that is required is a critical consideration of its empirical basis and logic. Empirically, it is true that miscarriage of justice does occur in all jurisdictions even after all due care had been taken and all appellate avenues exhausted. Logically, since no one knows which case would involve or would not involve a miscarriage of justice, such as a wrongful conviction, all judicial verdicts are inherently fallible.

Although Ôgundá’s epistemological argument against death sentence has been re-constructively articulated from the Yorùbá (African) cultural context, it could acquire a universal relevance. The possibility of error in human judgment of matters of fact and existence is universally acknowledged as an inherent part of our human nature (Ayer 1956: 39-40; Ayer 1981: 63; & Popkin 1967: 449 - 460). This universal human fallibility, particularly in judicial matters, is what Ôgundá’s heroic effort in the story from Ifá Literary Corpus above sought to demonstrate in a dramatic way in Òdù Ôgundá-Ìròsùn. Epistemologically, wherever and whenever the possibility of error cannot be completely eliminated, thereof human beings ought to be cautious, if they cannot be silent, by way of being circumspect in every judgment on the ground that evidence is yet inconclusive either for or against the case at hand. In law, this leads to the view that for judicial proof, there is no theoretical limit to evidence (Ôkè & Amodu, 2006:160). Hence, it is a sound argument that every society should abolish any form of punishment that tends to suggest that all possible evidence relevant to a case had been obtained, presented, and considered such that any future revision or reversal of the consequent verdict in the case is ruled out, as in the case of death sentences.

Although Ôgundá-Ìròsùn does not overtly allude to it, its abolitionist argument on death sentence is better appreciated in the context of its cultural social ethic. So situated, as would be done below, the thrust of Ôgundá’s epistemological argument for the abolition of death penalty is a call on the community to live up to its responsibility to its members in conformity with its avowed view of humanity as contained in Yorùbá social ethic.

Yorùbá social ethic is characterized by a communal humanism that emphasizes the interdependence of the individual and the community. In Gbadegesin’s expression, “The purpose of individual existence is intricately linked with the purpose of social existence, and cannot be adequately grasped outside it…. individuality and community thus become intertwined” (Gbadegesin, 1991:58). The interdependence between individuals and the community requires that the individual should be committed to the sustenance of his or her community as much as the community should be committed to the preservation of the life of all its members. Human beings are thus conceived in indigenous Yorùbá culture as
the ultimate agents for the “continued existence of the community” (Gbadegesin, ibid.), in virtue of which they are endowed with an inherent individual worth, such as is not accorded to other beings in nature. It is on the basis of their unique conception of the human being that the Yorùbá within their traditional and indigenous culture “understood the universality of human rights…. recognized and defended human rights”, and had institutional “measures to ensure that these rights are enforced, protected and proclaimed in culture, custom and tradition” (Bewaji, 2006: 51). In Yorùbá indigenous culture, therefore, the community has a duty to protect the humanity of all persons, irrespective of the circumstances of their lives or their social pedigrees. Thus, even when certain inadequacies or deficiencies are noted or alleged in particular individuals, the principle of universal humanity still requires that the essential dignity, the inherent worth of such persons be acknowledged, protected and respected in meting out any social sanction on them.

The existence of social arrangements to assess and deal with those who fall short or are alleged to fall short of social expectations or who violate social rules in Yorùbá culture “does not mean that their humanity is in any way compromised” (Bewaji, ibid.). As such, when humanity is being considered, Yorùbá indigenous culture does not discriminate between the accused, the convict, and the righteous. In its conception of humanity, Yorùbá indigenous culture shares an essential similarity with the views of other human cultures, notably those of cultures of modern societies, which have culminated in the 1948 United Nations Charter of Universal Declaration of Human Rights, which in contemporary cultures highlights “the need to have equality of respect and treatment for the humanity of all humans” (Bewaji, ibid. 51; 64), irrespective of the diversities of their existential circumstances, perfections, and shortcomings.

For the Yorùbá, in their indigenous culture, of all the rights that humans have “by virtue of their being humans and for no other reason except this” (Bewaji, ibid. 51), the most fundamental, in terms of making the other rights not only possible but also meaningful, is the right to life. The ultimacy of the right to life is expressed in the following Yorùbá sayings: “Èmí lójù” (‘Life is the most important’); “Bá ò kû, ìse kò tán” (‘If we are not dead, we still have roles to play’; “Èmí gígùn ló ñ sànyà” (‘It is a long life that compensates for suffering’); and “Ènì tó kú ni tire tâń” (‘Only the dead has forfeited all that he or she has, including rights, humanity and essential worth). Thus, as rightly noted by Bewaji (ibid. 62), “for the Yorùbá, life is valuable in itself”. For the Yorùbá, therefore, human life ought not to be deliberately taken, as is done in death penalty, for any reason whatsoever. It is for this reason that the community ought not to follow the way of the murderer through the use of the punishment of death on its members for offences against the community.

When the foregoing discussion is linked to the Yorùbá indigenous argument against death penalty, Ògúndá appears to have reasoned that the existence or retention of death sentence in Yorùbá society was at variance with the
foundational humanist principles of Yorùbá culture (Gbadegeisin, 1991: 61 – 82). More specifically, Ògúndá’s reasoning appears to be that the primacy of human life, in the context of an avowal of a communal duty of unconditional protection of every person’s right to life in Yorùbá culture, is intolerably compromised by a judicial system that allows the society to kill people for offenses committed or allegedly committed against the society. Ògúndá’s intolerance for the compromise is exacerbated by the demonstrated constant possibility – logical and empirical – of wrongful innocent conviction of an accused person at any level of the judiciary. On the 14th of May 2007, for instance, a Nigerian daily newspaper, (The Nation), reported the pathetic story of two policemen, Simon Edibo and Sunday Ndidi, who spent 17 years on death row before they were freed of the charge of armed robbery and murder for which they were condemned to death by the High Court of Delta State, which verdict was confirmed by the Appeal Court. Unfortunately, before The Supreme Court could set aside the judgments of the lower courts, one of the convicts, Sunday Ndidi, had died on the death row.

The injustice always occasioned by the occurrence of a miscarriage of justice, such as in a wrongful conviction, is what Ògúndá in his argument in Ògúndá-Íròsùn wanted to see abolished in his society. In this regard, it is to be noted that in Yorùbá indigenous culture, “injustice to one is injustice to all members of the society” (Bewaji, op.cit: 64), as is aptly expressed in the following Yorùbá proverbial sayings. “Àrùn tó ŋ se Abóyadé, gbogbo ọlọya ló ŋ se” (‘whatever is plaguing a member of the community of Oya’s devotees, (i.e. devotees of the Yorùbá River Deity) is plaguing every member of that community of devotees’); “Ikú tó ŋ pa ojúgbà ẹni, òwe ló ŋ pa fún ni” (‘the death that is consuming one’s peers is proverbially warning of one’s own impending similar death’); “Ohun tó bójú, ló bámú” (‘whatever affects the eyes affects the nose’); and “Eni tí kò i kú, kó mọ ikú tó má a pòun” (‘the living are ignorant of the manner of their death’). It is in the interest of everyone, therefore, and the duty of everyone as well, to see to the abolition of any form of punishment, such as death sentence, that violates the essential dignity of any human being, no matter how grievous the alleged offence or how obvious the guilt of the accused might seem. Otherwise, such punishment is awaiting everyone else in the society where it was not abolished. As the Yorùbá say “pàsàn tí a fì nàyáálé ń bẹ lájà fún ìyàwó” (‘the cane that was used to beat the senior wife is waiting in the ceiling for the junior wife’)

The above outlined cultural context, housing Ògúndá’s argument for the abolition of death sentence, finds a broader expression in an indigenous African social ethic that is discernible among the Akans of Western Africa (Busia, 1962: 33; Gyekye, 1987: 155), and many Bantu societies of Southern Africa The pan-African social ethic under reference is conceptualized as ‘Ubuntu’ in the Bantu languages of Southern Africa (Panse), and has been described as “a traditional African philosophy that offers us an understanding of ourselves in relation with the world” and “defines what it means to be truly human” (ibid). It is regarded as a “traditional African concept”, “a sub-Saharan ethos or humanist ideology
focusing on peoples’ allegiances and relations with each other” (Wikipedia). As advanced by Tutu (Wikipedia), and discussed by Teffo (1998: 240 – 241), the central point of Ubuntu is that human beings are inextricably connected to one another in concrete, rather than abstract, ways, such that the humanity of one is defined by the humanity of the other person and by membership of a community. Ubuntu, as Teffo describes it, “is a social ethic, a unifying vision enshrined in the Zulu maxim: umuntu ngumuntu ngabanye (one is a person through others). According to Bishop Tutu, Ubuntu is the “essence of being human” that makes or perhaps should make people “open and available to others, willing to be vulnerable...know that they are diminished when others are humiliated, diminished when others are oppressed, diminished when others are treated as if they were less than who they are” (Tutu, Wikipedia) In his further characterization of Ubuntu, Teffo (ibid.) presents it as an indigenous African humanist ideology. He observes that from the Ubuntu perspective, “African societies placed a high value on human worth, but it was a humanism that found expression in a communal context rather than in the individualism of the West”. Explaining further, Teffo says, “Ubuntu or humanness implies a basic respect for human nature.” This Ubuntu humanness is seen in a person’s relationship with other members of his/her family or community. In such relationship, for a person with Ubuntu, “The dignity, safety, prosperity, health and development of all people is the most important priority”. Moral judgment is thus based on how humane a person’s behavior is towards other human beings. As succinctly put by Ahianzu (2006: 33), “Ubuntu is about people and more importantly about relationships between people”. Thus, “an UBUNTU view of life is synonymous with concepts such as cooperation, mutual respect and support as well as unity within the community” (Teffo, ibid, 240). Hence, if as Tutu says of Ubuntu, “We belong in a bundle of life” (Tutu, ibid; also Thabo Mbeki, 2001: 9; Louw, 2001:15; and Nussbaum, 2001: 4.), then we need, as a community, and as individuals, to be considerably and consistently *open, rather than finalistic*, in our opinions and judgments of ourselves and other fellow human beings.

Placed in the wider context of Ubuntu, Ògúndá’s argument for the abolition of death penalty in traditional Yorùbá society was based on the view that human society’s judicial and penal systems ought to be humane in conformity with a due recognition of an ever-fallible humanity. Ògúndá’s argument was that the African cultural avowal of communal protection of everyone’s human rights and respect for the human dignity of all, was patently not in sync with either the policy or the practice of judicially killing offenders or alleged offenders in the community, especially when it was granted that the judicial system was always vulnerable to error.

4. CONCLUSION

The above jurisprudential conclusion does not preclude the divinatory signification of *Odù Ògúndá- Ìròsùn*; rather it complements it. Divinatorily, the *Odù*, in the portion of it used in this paper, signifies the imminence of an injustice
or a miscarriage of justice, or that such injustice or miscarriage of justice had actually taken place. Whichever is the case, the Odù goes further to prescribe how to prevent or redress the injustice or miscarriage of justice. The details of this aspect are parts of the Ifá practitioners’ professional trade secrets.

It is to be noted that this indigenous argument is not based strictly on moral grounds. This is because its conclusion does not arise solely from a moral evaluation of capital punishment. The rejection of capital punishment is also not just from a practical or pragmatic or teleological or some other consequentialist consideration. This is because the argument does not claim that capital punishment is bad, unjustifiable or undesirable because of the practical or utilitarian reason that it never achieves its intended purpose or purposes such as deterrence and psychosocial balance. Similarly, the rejection is not based on metaphysical considerations such as that human nature forbids the killing of persons, or that human life, *simpliciter*, is sacred and so should never be taken by anyone for any reasons whatsoever, etc. It is also noteworthy that the Ifá argument, although extracted from a sacred text, is not a religious or a theological one. It is a secular argument based entirely on empirical human observation and logical reasoning within a humanist social ethic. Its premises make no reference to God, the will of God, the judgment of God, or post-life existence in support of the conclusion that capital punishment is inherently objectionable. Finally, it is to be noted that unlike the classical humanitarian argument against the death penalty, the point of Ògundá - Ìròsùn is not just that capital punishment is cruel, wicked and inhuman.

Yet, in spite of the above, this objection to capital punishment in Ifá is neither a casual nor a flimsy pedestrian expression of a wish, ideal or opinion. Rather, it is a strong argument arising from a skeptical epistemological standpoint with sharp ethical and legal implications, and demonstrated in a logical and scientific way. The argument has also extensionally involved the Yorùbá social ethical context within which it arose and which made its jurisprudential thrust better appreciated.

Beyond its immediate Yorùbá context, the discussion has been extended to the larger pan-African indigenous socio-ethic perspective known as ‘Ubuntu’, a communal humanist ethical standpoint that is dominant in many traditional African societies and is considered relevant in the contemporary world. As put by Ahiauzu (op. cit: 36), Ubuntu “embodies a fundamental aspect of the way Africans see themselves and their relationships with others”, the ethos of which, in the opinion of Teffo (op. cit: 241), “is one single gift that African philosophy can bequeath to other philosophies of the world, in particular Western philosophy”.

On a meta-discourse level, the discussion in this paper complements the point that many have sought to make against the tendency to deny the existence and possibility of African jurisprudence and thus to exclude African texts from the body of classical texts in law and philosophy of law. In particular, it substantiates,

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1 By 'indigenous' here is meant 'aboriginal, authentic, traditional, pre-colonial homegrown, not alien, not foreign, not imported'.
2 As reported in Owoade 1988:60, fn. 57: “Death penalty... America”.
5 Expressions of such views will be found in Horton (1967), (1977), and (1982). For views to the effect that Africans lack a conceptual and correct analysis of the concept of law, and that even if Africans had indigenous systems of social control, such systems lacked any trace of legality, legal concepts and logical elements, and that there is no African jurisprudence, see: Holleman, 1974: 13; and Driberg, 1934, & 1935, among others.
7 As contained in the references in note 3 above.

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An *‘odù’* is a section of *Ijá*, comparable to a chapter in a book. There are as many as 256 of such sections in the *Ijá* Literary Corpus, each one dwelling on a set of interlocked themes or theories presented as a body of coded knowledge on a specific set of related matters which only
the initiated, the reflective, or the wise can understand. Abimbola (1977:15) refers to Odù as "categories of poetry in the Ifá literary corpus", each with "its own distinct signature and character". There are primary ‘Odù’ called ‘Ojú Odù’ (16 in number), and 240 derived or mixed ‘Odù’ called ‘Ámúlùmálà Odù’ or ‘Ọmpọ odù’, Ògúná - Iròsùn is a mixed Odù, comprising of Odù Iròsùn méji and Ògúná méji. A version of the passage used in this discussion can be found in Bascom, W. (1980): 488.