

Forensic Orality: Rethinking African Oral Traditions in Legal and Judicial Contexts

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Abstract: This article advances *forensic orality* as a comprehensive framework for rethinking how African oral traditions shape legal reasoning, evidentiary practices, and the pursuit of justice. Dominant legal systems privilege written documentation as the benchmark of truth, yet African societies have long relied on oral testimony, genealogical narration, performance, and communal witnessing as legitimate modes of adjudication. Drawing on Orality–Literacy Theory, Legal Anthropology, African Epistemologies, and Feminist Jurisprudence, the article conceptualizes forensic orality as a robust epistemic system that challenges Eurocentric evidentiary hierarchies. Through case studies from Ghana, Nigeria, South Africa, and Rwanda, as well as comparative analyses of Navajo peace-making, Māori jurisprudence, First Nations land claims, and Indigenous courts in Latin America, the study demonstrates how oral traditions operate as juridical practices with historical depth and contemporary vitality. Incorporating new attention to gender, digital transformations, trauma, and power dynamics, the article highlights both the strengths and vulnerabilities inherent in oral testimony. It further proposes policy reforms to integrate forensic orality into modern courts, including judicial training, multilingual interpretation, the recognition of proverbs and communal knowledge, and mechanisms to protect women witnesses. Ultimately, the study argues that forensic orality is a living archive of justice whose performative, participatory, and culturally grounded modes of truth-making are essential for epistemic justice, restorative democracy, and pluralistic African - and global-jurisprudence.

Keywords: forensic orality; evidentiary justice; African jurisprudence; legal anthropology; testimony; epistemology.

Résumé : Le présent article propose l'oralité forensique comme cadre théorique et analytique exhaustif destiné à repenser la manière dont les traditions orales africaines structurent le raisonnement juridique, les pratiques probatoires et la quête de justice. Les systèmes juridiques dominants érigent la documentation écrite en étalon privilégié de la vérité ; or, les sociétés africaines ont, de longue date, fondé leurs mécanismes d'arbitrage sur le témoignage oral, la narration généalogique, la performance rituelle et la déposition communautaire, conçus comme des modes légitimes d'adjudication. S'appuyant sur la théorie de l'oralité et de la littératie, l'anthropologie juridique, les épistémologies africaines et la jurisprudence féministe, l'étude conceptualise l'oralité forensique comme un système épistémique structuré, apte à contester les hiérarchies probatoires d'inspiration eurocentrée. À travers des études de cas issues du Ghana, du Nigeria, de l'Afrique du Sud et du Rwanda, ainsi que des analyses comparatives portant sur les pratiques de pacification navajo, la jurisprudence māorie, les revendications territoriales des Premières Nations et les juridictions autochtones d'Amérique latine, l'article démontre que les traditions orales constituent de véritables pratiques juridiques, dotées d'une profondeur historique et d'une vitalité contemporaine. En accordant une attention renouvelée aux questions de genre, aux mutations numériques, aux dynamiques traumatiques et aux rapports de pouvoir, l'analyse met en lumière tant les forces que les vulnérabilités inhérentes au témoignage oral. L'article propose en outre des réformes normatives visant à intégrer l'oralité forensique dans les juridictions modernes, notamment par la formation spécialisée des magistrats, l'interprétation multilingue, la reconnaissance des proverbes et des savoirs communautaires comme éléments probatoires, ainsi que la mise en place de mécanismes de protection des femmes témoins. En définitive, cette recherche soutient que l'oralité forensique constitue une archive vivante de la justice, dont les modalités performatives, participatives et culturellement ancrées de production de la vérité sont indispensables à l'avènement d'une justice épistémique, d'une démocratie restauratrice et d'une jurisprudence pluraliste, tant africaine que mondiale.

Mots-clés : oralité forensique ; justice probatoire ; jurisprudence africaine ; anthropologie juridique ; témoignage ; épistémologie.

Introduction

In contemporary legal systems, the written word remains the supreme arbiter of truth. Affidavits, archival documents, sworn statements, and codified statutes predominate in judicial reasoning, upholding the long-held assumption—rooted in Western jurisprudence—that permanence, objectivity, and rationality are inherent in writing. Yet this privileging of literacy masks the fact that large segments of the world continue to operate within oral epistemologies, where truth is constituted and validated through speech, performance, memory, and communal witnessing. Across Africa, this epistemic orientation is not a vestige of the past but a living tradition: oral forms of knowledge remain central to governance, conflict resolution, historical narration, and moral accountability. The enduring presence of oral testimony in customary courts, mediation forums, family councils, and post-conflict tribunals reveals a profound tension between written-centric legal frameworks and African modes of truth production.

This tension gives rise to what this study conceptualizes as forensic orality—the deployment of oral traditions, narrative performances, genealogical accounts, proverbial reasoning, and communal witnessing in the service of legal truth-making. Forensic orality highlights the performative, persuasive, and epistemic power of speech in contexts where written records may be absent, inaccessible, or historically unreliable due to colonial disruption and structural inequalities. While Western forensic science typically evokes images of technological evidence such as fingerprints, DNA, or digital traces, African jurisprudence demonstrates that forensic authority can also reside in oral testimony, embodied memory, and culturally encoded knowledge systems. In this sense, the forensic is not merely material; it is also oral, relational, and ritualized, embedded in systems of meaning that precede and exceed writing.

Scholars of African orature have long established that oral forms are complex, rule-governed modes of knowledge production. Finnegan's *Oral Literature in Africa* (2012) and Barber's (2007) analysis of performance and publics demonstrate that oral texts are not spontaneous utterances but structured interventions shaped by social norms, memory practices, and cultural logics. Ong's (1982) seminal work on orality further clarifies that oral societies organize knowledge through repetition, communal affirmation, and performance, rendering the spoken word authoritative, binding, and epistemically robust. Legal anthropology reinforces this understanding: Comaroff and Roberts (1981) show that oral performances in Tswana courts are governed by highly patterned rhetorical strategies, where credibility derives from cultural fluency, narrative coherence, and communal validation. These insights collectively highlight that oral testimony in African settings cannot be dismissed as fragile memory; it is a coherent epistemic system with its own internal standards of truth.

The vitality of forensic orality becomes evident in case studies across the continent. Customary courts in Ghana and Nigeria adjudicate disputes over land, inheritance, and kinship through oral testimonies corroborated by lineage narratives and communal memory (Oba, 2002). South Africa's Truth and Reconciliation Commission (TRC)¹ demonstrated the moral and juridical force of testimony, with the narratives of both victims and perpetrators shaping national healing and historical reckoning (Krog, 1998; Mamdani, 2000). Similarly, Rwanda's Gacaca Courts² relied extensively on oral accounts

to reconstruct events in the aftermath of genocide (Clark, 2010). These examples reveal that forensic orality is not peripheral to African jurisprudence—it is foundational.

African philosophies of knowledge deepen the conceptual grounding of forensic orality. Wiredu (1996) and Mbiti (1990) argue that truth in African worldviews is dialogical, relational, and communally verified rather than text-bound. Knowledge emerges through lived experience, collective recognition, and moral accountability. Proverbs, storytelling, and genealogical recitation function not merely as decorative speech acts but as epistemic and juridical instruments that carry cultural authority. In this sense, forensic orality is not simply evidentiary; it is ontological, embodying African conceptions of personhood, community, justice, and historical continuity.

Yet the persistence of forensic orality also exposes the enduring reality of epistemic injustice. Fricker (2007) warns that dominant epistemic frameworks often marginalize certain ways of knowing; in Africa, the privileging of written evidence—rooted in colonial legal codes—systematically devalues oral testimony. Such hierarchies not only distort legal outcomes but also impose Eurocentric standards that fail to account for African epistemologies and historical realities. Forensic orality, therefore, challenges courts to broaden their evidentiary horizons and dismantle inherited biases against oral truth-telling.

Despite its centrality, forensic orality has been under-theorized in African studies, legal scholarship, and oral literature. Existing accounts often treat oral evidence as a pragmatic substitute for writing when writing is absent, rather than as a fully developed epistemic and juridical system. This study aims to fill that gap by providing a comprehensive theorization of forensic orality that integrates orality–literacy theory, legal anthropology, African epistemologies, feminist jurisprudence, and digital transformations. It also situates African oral traditions within a broader global context, demonstrating parallels with Navajo peacemaking courts, Māori *whakapapa* jurisprudence, First Nations land claims in Canada,⁵ and Indigenous legal systems in Latin America.⁶ These global resonances affirm that African jurisprudential insights are not peripheral but foundational to worldwide debates on law, truth, memory, and justice.

The stakes of conceptualizing forensic orality are profound. In contexts marked by gender-based violence, land dispossession, transitional justice, and digital communication technologies, evidentiary norms determine whose voices are heard, whose stories are believed, and whose histories are acknowledged. This article, therefore, positions forensic orality as both a living juridical practice and a cultural archive of truth-making. Through interdisciplinary analysis and comparative case studies, this argument asserts that recognizing the legitimacy of oral traditions is crucial for achieving epistemic justice, strengthening restorative democracy, and affirming Africa's intellectual contributions to global jurisprudence.

This article therefore advances a central analytical claim: that oral traditions in African legal contexts do not merely supplement written evidence but constitute a distinct epistemic infrastructure through which legal truth is constructed, evaluated, and legitimized. By conceptualizing this infrastructure as forensic orality, the article positions oral testimony as a juridical apparatus through which truth is produced, mediated, and

legitimized within legal discourse, rather than a residual cultural practice. The analysis that follows examines how forensic orality operates across historical, institutional, and digital contexts to produce credible knowledge within plural legal systems.

1. Conceptualizing Forensic Orality

While scholarship on African law frequently refers to oral evidence, oral jurisprudence, or oral legal traditions, the concept of forensic orality proposed in this article offers a more analytically precise framework. Recent scholarship on African legal pluralism and living customary law shows that courts continue to rely on oral evidence when determining the content of customary norms, especially where community practice cannot be reduced to documentary proof (Bonthuys 2025; Radebe 2025). In this narrower sense, oral evidence generally refers to testimony or witness accounts delivered verbally in legal proceedings, while oral jurisprudence and oral legal traditions more broadly describe legal norms, interpretive practices, and institutions transmitted through speech, memory, and custom rather than through codified writing. Yet these terms often remain descriptive: they identify the presence of speech in legal practice without fully theorizing how oral performance itself structures credibility, authority, and the production of legal truth. Recent work in African forensic linguistics likewise underscores that spoken utterances in legal settings are not merely conveyors of information but sites where meaning, authority, and evidentiary force are negotiated.

The concept of forensic orality advances a more comprehensive understanding. It refers to the structured deployment of oral performances—including testimony, storytelling, genealogical narration, proverbs, oath-taking, and communal witnessing—as juridical mechanisms for establishing credibility, reconstructing events, and legitimizing legal decisions. Unlike conventional notions of oral evidence, which often focus narrowly on the content of speech, forensic orality emphasizes the performative, relational, and culturally embedded processes through which truth is produced in oral societies. This broader formulation is especially important in African plural-legal contexts, where evidentiary authority may emerge from community recognition, living customary norms, and oral performances that carry social and moral force alongside, or sometimes in tension with, statutory law. It is also increasingly relevant in digitally mediated legal environments: recent scholarship on digital proceedings in African courts shows that voice notes, recordings, and other forms of spoken digital trace are reshaping how oral utterance is preserved, replayed, authenticated, and evaluated within contemporary adjudication.

Operationally, forensic orality may be identified through three interrelated dimensions. First is performative testimony, where speech acts themselves carry juridical force within culturally recognized settings of adjudication. Second is communal validation, in which credibility is assessed collectively through shared memory, reputation, social recognition, and the ascertainment of living customary law. Third is cultural reasoning, where proverbs, genealogies, narrative precedents, and historically grounded communal norms function as interpretive tools for determining justice. In sum, these dimensions distinguish forensic orality from other forms of oral legal communication by treating orality not simply as a medium of expression, but as a distinct epistemology of evidence. In this sense, forensic orality names the legal work done by oral performance in plural legal orders: it identifies how spoken forms of truth-making acquire authority, how they are institutionally recognized, and how they continue to evolve across customary, hybrid, and digitally mediated courts in Africa.

2. Literature Review

The study of forensic orality—understood as the juridical deployment of oral traditions, performances, and testimonies—draws on several intersecting bodies of scholarship: African orature studies, legal anthropology, African epistemologies, transitional justice literature, feminist jurisprudence, and comparative Indigenous legal systems. Together, these bodies of work provide the conceptual and empirical foundation for rethinking the role of oral traditions in contemporary legal contexts.

2.1. Orality, Knowledge Production, and African Epistemologies

Foundational scholarship on African orature offers crucial insights into the epistemic and performative dimensions of oral communication. Ruth Finnegan's *Oral Literature in Africa* (2012) remains the seminal text in this field, demonstrating that oral genres—such as proverbs, storytelling, praise poetry, and ritualized speech—constitute complex, rule-governed systems of knowledge production (Finnegan, 2012). Similarly, Barber (2007) emphasizes that oral texts operate as social interventions shaped by performance, public participation, and the cultural politics of authority. These insights are reinforced by Ong's (1982) *Orality and Literacy*, which theorizes how oral societies rely on memory, repetition, and communal validation to preserve knowledge. According to Ong, oral forms of truth are intrinsically performative and relational, making them especially relevant for juridical contexts where credibility often depends on affect, coherence, and communal affirmation.

African philosophies of knowledge further deepen the epistemological grounding of forensic orality. Wiredu (1996) and Mbiti (1990) argue that truth in African thought is dialogical, consensus-driven, and embedded in lived experience rather than abstract textual record. These scholars reject the literacy bias that equates writing with rationality, instead emphasizing that oral epistemologies also embody equally rigorous forms of knowledge verification. Proverbs, genealogies, and communal testimony function as epistemic mechanisms that record history, encode moral reasoning, and legitimize juridical outcomes. This body of literature establishes that oral testimony in African contexts cannot be reduced to memory traces; it is part of an elaborate epistemic framework through which communities generate and authenticate truth.

2.2. Legal Anthropology and the Cultural Logics of Oral Evidence

Legal anthropology provides a critical lens for understanding how oral testimony functions within African judicial systems. Comaroff and Roberts' (1981) seminal ethnography of dispute resolution among the Tswana illustrates that oral performances in customary courts follow structured rhetorical and cultural logics rather than spontaneous storytelling. Testimony, persuasion, reputation, and proverbial reasoning operate as culturally embedded mechanisms of adjudication (Comaroff & Roberts, 1981). These findings are echoed in Bennett's (2009) analysis of African customary law, which argues that oral adjudication systems embody *living law*—dynamic, evolving, and responsive to social realities. Such scholarship challenges Western presumptions that equate oral processes with informality or evidentiary weakness.

Studies of customary courts across West and Southern Africa further highlight the centrality of orality in legal reasoning. Oba (2002) demonstrates that Nigerian customary courts rely extensively on oral witness accounts, genealogical testimony, and communally validated memory—especially in land and inheritance disputes. The persuasive force of oral evidence in these systems is judged not solely by its content but also by demeanor, coherence, and corroboration from community members. Collectively, legal anthropological scholarship reveals that forensic orality is not a cultural remnant but a legally sophisticated practice grounded in historically entrenched jurisprudential norms.

2.3. Transitional Justice, Memory, and Performance

The transitional justice literature provides substantial evidence of the juridical power of oral testimony in contexts of historical trauma and national reconciliation. South Africa's Truth and Reconciliation Commission (TRC) stands as a landmark example. Scholars such as Krog (1998) and Mamdani (2000) demonstrate how the TRC privileged narrative testimony as a crucial mode of truth-making, offering moral recognition, historical accountability, and symbolic reparation. Oral narratives served not merely as supplementary evidence but as central vehicles for reckoning with apartheid-era violations.

Similarly, Rwanda's Gacaca courts relied heavily on oral testimony to reconstruct events of the 1994 genocide. Clark (2010) argues that Gacaca's reliance on communal memory, neighbor testimony, and public confession constituted a unique form of forensic orality necessitated by the destruction of written records. However, transitional justice scholarship also highlights the vulnerabilities of oral testimony: trauma-induced memory gaps, community pressure, and the potential for manipulation. This resonates with Fricker's (2007) theory of epistemic injustice, which warns that marginalized voices often face credibility deficits in institutional settings.

2.4. Feminist Jurisprudence and the Gender Politics of Oral Testimony

Feminist scholarship provides a critical perspective on forensic orality, underscoring how gender influences the reception and evaluation of oral testimony. Nnaemeka's (2005) concept of "nego-feminism" contextualizes how African women negotiate power, relationality, and authority in oral performances. Amina Mama (1995) critiques patriarchal legal cultures that silence or devalue women's voices, particularly in cases of sexual violence where oral testimony is often the only evidence. McFadden (2001) similarly argues that African feminist justice must recognize embodied, lived, oral narratives as legitimate sources of legal truth. Together, these scholars emphasize that forensic orality is inextricably linked to gender politics and must be theorized within feminist legal frameworks.

2.5. Comparative Indigenous Jurisprudence: Global Resonances

Beyond Africa, a growing body of literature highlights the centrality of oral traditions in global Indigenous legal systems. Research on Navajo Peacemaking Courts shows that oral dialogue, storytelling, and community participation lie at the heart of restorative justice (Yazzie & Zion, 1996). Māori jurisprudence similarly recognizes *whakapapa*—genealogical oral knowledge—as authoritative evidence in land and tribal identity cases (Durie, 1998).

The landmark Canadian Supreme Court case *Delgamuukw v. British Columbia* (1997) affirmed the validity of First Nations oral histories as legal evidence, marking a significant shift in Western evidentiary norms. Latin American Indigenous tribunals, as described by Van Cott (2000), likewise rely on oral testimony and communal deliberation to resolve disputes. This comparative literature situates Africa at the center—not the periphery—of global jurisprudential debates about orality, evidence, and justice.

2.6. Emerging Scholarship on Digital Orality and New Evidentiary Forms

Recent literature highlights the transformation of forensic orality in digital environments. WhatsApp voice notes, viral videos, and social media confessions now circulate as authoritative oral-visual evidence in African courts. Scholars such as Chouliaraki (2012) theorize “mediated witnessing,” where digital testimonies reshape public and juridical understandings of truth. Schoon (2021) notes that voice notes capture affective and performative cues crucial to credibility assessment. However, digital testimony also raises questions about manipulation, authentication, and the epistemic status of digital orality—a rapidly growing area in legal studies and digital anthropology.

Also, prevailing studies on digital evidence further demonstrates how technological mediation is reshaping evidentiary cultures across African legal systems. Studies of mobile-phone recordings in criminal investigations highlight how digital audio and video now function as hybrid forms of testimony that combine oral performance with documentary permanence (Oyerinde 2020). Similarly, research in digital anthropology suggests that the proliferation of smartphones has expanded the reach of oral witnessing, allowing individuals to record, archive, and circulate spoken accounts beyond local communities. These developments suggest that forensic orality is not disappearing in the digital age but is instead undergoing technological transformation, generating new questions about authenticity, verification, and evidentiary authority in contemporary courts.

The reviewed literature reveals the depth and diversity of scholarship on African orature, legal anthropology, transitional justice, feminist jurisprudence, and global Indigenous law, yet it also exposes a critical gap: oral testimony has rarely been theorized as a unified juridical framework. Existing studies treat orality in fragmented or descriptive terms, without capturing its full epistemic, cultural, gendered, and now digital significance. This study fills that gap by advancing forensic orality as an integrated, multidisciplinary framework that reconceptualizes oral traditions as legitimate legal epistemologies with their own standards of credibility and truth-making. By synthesizing insights from African philosophies, feminist theory, global Indigenous jurisprudence, and contemporary digital evidence, the study demonstrates an urgent need to reconfigure evidentiary norms in African courts. Forensic orality thus offers a transformative lens for dismantling inherited Eurocentric biases and building more inclusive, culturally grounded, and justice-driven legal systems.

In essence, these strands of scholarship reveal an important analytical gap. While existing literature documents the presence of oral testimony in African legal contexts, few studies conceptualize how oral performance itself functions as an epistemic mechanism for generating legal authority. The analytical contribution of this study lies precisely in

addressing this gap by theorizing forensic orality as the structured relationship between oral performance, communal validation, and juridical credibility.

3. Methodology and Analytical Approach

This study adopts a conceptual, interpretive, and interdisciplinary analytical approach designed to illuminate the epistemic, juridical, and cultural dimensions of forensic orality in African legal contexts. Rather than relying on empirical fieldwork or quantitative data, the article employs theoretical synthesis, comparative textual interpretation, and interpretive anthropology to examine how oral traditions serve as juridical resources across diverse African societies.

To ensure analytical coherence, the study adopts a purposive comparative case-study design. The African case studies discussed in this article—Ghana, Nigeria, Rwanda, and South Africa—were selected using three criteria. First, each represents a distinct legal configuration in which oral testimony plays a demonstrable role in adjudication: customary courts (Ghana and Nigeria), community-based transitional justice (Rwanda's Gacaca courts), and hybrid restorative justice institutions (South Africa's Truth and Reconciliation Commission). Second, the cases span different regions of Africa—West, East, and Southern Africa—thereby capturing geographical diversity and avoiding the overgeneralization of a single legal tradition. Third, these cases have generated extensive scholarly documentation, enabling rigorous comparative interpretation of how oral testimony operates as juridical evidence in both customary and formal legal arenas. Through this purposive selection strategy, the article is able to illuminate the varied institutional contexts in which forensic orality functions, while also identifying broader patterns that transcend individual legal systems.

The purpose of this methodological strategy is not merely descriptive but analytical. By comparing multiple legal contexts, the study identifies recurring patterns through which oral testimony acquires evidentiary authority—namely performative credibility, communal validation, and cultural reasoning. These patterns allow the article to move beyond isolated case descriptions toward a broader analytical framework explaining how forensic orality operates across African legal systems.

The analysis draws extensively on secondary literature, including foundational works in Orality–Literacy Theory (Ong; Finnegan), African philosophy (Mbiti; Wiredu), and Legal Anthropology (Comaroff & Roberts). These texts provide the conceptual scaffolding for understanding orality not merely as a communicative mode but as an epistemic system embedded in social norms, memory practices, and cultural performance. Complementing these theoretical sources, the study draws on ethnographic accounts, legal monographs, and historical studies that document oral jurisprudence in specific African contexts, such as Ghana, Nigeria, Rwanda, and South Africa. This reliance on existing scholarship enables a critical reinterpretation of forensic orality across both precolonial traditions and contemporary hybrid legal systems.

In addition, the study employs comparative case analysis, drawing on legal reports, transitional justice documents, customary court records, and scholarly interpretations of landmark forums such as the South African Truth and Reconciliation Commission (TRC) and Rwanda's Gacaca courts. These case studies serve not as empirical datasets but as

illustrative, context-rich examples that reveal how oral testimony operates as evidence, how credibility is negotiated communally, and how cultural idioms—such as proverbs, genealogies, and storytelling—shape juridical outcomes.

Methodologically, the article adopts an interpretive anthropological orientation, prioritizing the analysis of meaning, cultural logic, symbolism, and performance within legal processes. This approach is essential for understanding oral testimony not merely as content but as *cultural action*—a performative act through which truth is produced, validated, and socially recognized. Through this lens, forensic orality is examined as both an epistemic practice and a social drama in which law, culture, memory, and community converge.

Finally, the study adopts a comparative textual analysis that juxtaposes oral jurisprudence with literate legal systems, highlighting tensions, complementarities, and epistemic hierarchies. This method enables the article to expose how written-centric legal standards marginalize oral forms of truth-making, while also demonstrating the resilience and legitimacy of oral traditions in African contexts.

Together, these methodological choices create a rigorous and multidimensional framework for theorizing, contextualizing, and positioning forensic orality within broader debates on evidence, justice, and epistemic authority.

4. Theoretical Framework

The conceptual foundation of this study rests on the integration of three interrelated theoretical perspectives: Orality–Literacy Theory, Legal Anthropology, and African Epistemologies. Together, these frameworks provide a comprehensive analytical lens through which to examine, theorize, and situate the concept of forensic orality within broader debates on law, truth, and justice. Rather than treating them as discrete or competing paradigms, the study positions them in a dialogical relationship in which each illuminates distinct dimensions of forensic orality while collectively reinforcing its epistemic and juridical significance.

The primary framework employed is Orality–Literacy Theory, most prominently articulated by Walter Ong (1982) and elaborated in African contexts by Ruth Finnegan (2012). Ong’s thesis that oral cultures rely on memory, performance, and communal validation to preserve and transmit knowledge offers a powerful lens for understanding how oral testimony functions in African judicial contexts. Within oral societies, words are not inert symbols but living acts; the spoken word carries performative force, binding individuals and communities through its immediacy and authority. In legal settings, this performativity translates into testimony that is not merely descriptive but constitutive of truth itself. Finnegan’s pioneering research further demonstrates that African oral traditions, from praise poetry to proverbial discourse, operate within rigorous internal logics that structure meaning and establish legitimacy. Applying Orality–Literacy Theory to forensic contexts enables this study to frame oral testimony not as a fragile memory competing with the stability of writing, but as a valid epistemic mode with its own coherence and authority.

To complement this primary lens, the study draws on Legal Anthropology, which situates forensic orality within the cultural and institutional contexts of law. Scholars such as John Comaroff and Simon Roberts (1981) have shown that dispute resolution in African societies is deeply embedded in social norms, rhetorical strategies, and cultural expectations. Testimony, persuasion, and consensus-building are not secondary to legal process but constitute its very logic. Legal anthropology thus provides a methodological sensitivity to the ways oral testimony operates as evidence within both customary and hybrid legal systems. For example, in Ghanaian tribunals or Nigerian customary courts, testimony is often corroborated not by written records but through communal memory and collective recognition of events (Oba, 2002). Similarly, in South Africa's Truth and Reconciliation Commission, oral narratives were valued for their restorative and reconciliatory potential, demonstrating the juridical force of orality when embedded in culturally resonant practices (Krog, 1998; Mamdani, 2000). Legal anthropology, therefore, complements Orality–Literacy Theory by emphasizing the sociocultural and institutional dimensions of forensic orality: how speech functions within power structures, how credibility is negotiated, and how truth is co-produced in communal contexts.

Enriching these perspectives is the lens of African Epistemologies, which reframes forensic orality not merely as a cultural practice but as a legitimate system of knowledge production. African philosophers, such as Kwasi Wiredu (1996) and John Mbiti (1990), have argued that knowledge in African traditions is dialogical, participatory, and grounded in lived experience. Truth is less an abstract correspondence with facts and more a product of consensus, moral accountability, and social harmony. From this perspective, forensic orality derives its legitimacy not from its approximation of literate forms but from its rootedness in African worldviews where the spoken word carries metaphysical weight. Proverbs, for instance, are not simply rhetorical flourishes but epistemic condensations of communal wisdom and moral reasoning. Testimonies are validated through collective memory, rather than individual documentation, reflecting a different yet equally rigorous epistemic standard. African Epistemologies thus enrich Orality–Literacy Theory and Legal Anthropology by foregrounding the ontological and moral dimensions of forensic orality, situating it within broader philosophies of justice that prioritize restoration, consensus, and the dignity of the human person.

Taken together, these three frameworks interlink to produce a holistic understanding of forensic orality. Orality–Literacy Theory clarifies the internal logics of oral communication and its performative power; Legal Anthropology highlights the institutional and cultural contexts in which oral testimony functions as evidence; and African Epistemologies affirm the philosophical legitimacy of orality as a system of knowing and doing justice. The interweaving of these perspectives allows the study to move beyond narrow dichotomies of orality versus literacy, or tradition versus modernity, toward a conceptualization of forensic orality as a living juridical practice that both shapes and is shaped by African realities.

This integrative framework also positions forensic orality within global debates on law and justice. By foregrounding the epistemic legitimacy of oral traditions, it challenges the Eurocentric privileging of written documentation as the sole standard of truth. At the same time, it demonstrates how African legal practices contribute to broader

jurisprudential discourses on evidence, memory, and reconciliation. Forensic orality, when examined through these interlinked theories, emerges as not only a cultural phenomenon but also a theoretical resource capable of reshaping our understanding of law and truth in both African and global contexts.

5. Historical Trajectories of Orality in African Legal Contexts

The role of orality in African legal contexts must be situated within its historical trajectories, spanning the precolonial era, the disruptions of colonial rule, and the continuities and adaptations evident in contemporary customary courts and village tribunals. These trajectories illuminate both the resilience of forensic orality and the tensions introduced by colonial efforts to privilege written codes over oral traditions.

5.1. Oral Testimony in Precolonial Justice Systems

In precolonial African societies, oral testimony constituted the backbone of legal and judicial practice. Justice was often administered in open communal spaces—such as village squares, palaces, or designated meeting grounds—where disputants, elders, and community members participated in adjudicating cases (Allott 1960; Elias 1956). The spoken word carried binding authority, reinforced by proverbs, metaphors, and narratives that condensed moral reasoning and legitimized verdicts. For example, among the Akan of Ghana, adjudication relied heavily on proverbial wisdom and the testimony of elders, whose authority was grounded in memory and reputation rather than written record (Wiredu 1996). Similarly, in Igbo society, oaths, curses, and oral affirmations were employed as juridical tools to ensure truth-telling and accountability (Obi, 1963). Oral testimony functioned not merely as evidence but as performative speech that produced and legitimized juridical outcomes, embodying the collective moral fabric of the community.

5.2. Colonial Disruption and the Imposition of Written Legal Codes

The advent of colonialism fundamentally disrupted these oral-based systems of justice. Colonial administrations imposed written legal codes modeled on European jurisprudence, displacing indigenous modes of adjudication and introducing a hierarchy in which writing was equated with authority and rationality (Chanock, 1985; Mamdani, 1996). Customary courts were tolerated but subordinated, their decisions often subjected to review or nullification by colonial magistrates. In many cases, the oral practices of testimony, oath-taking, and communal witnessing were reclassified as “customary” and relegated to the margins of “modern” law. The imposition of written records also produced epistemic hierarchies, whereby African oral testimonies were deemed less reliable than documentary evidence (Chanock, 1998). The colonial codification of African customs paradoxically froze dynamic oral practices into rigid, written statutes, stripping them of their performative vitality and adaptability. As scholars have noted, this legal dualism—between written colonial law and subordinated oral customary law—created lasting tensions in postcolonial African states (Mamdani, 1996).

5.3. Continuities in Customary Courts and Village Tribunals

Despite colonial disruptions, orality persisted as a vital dimension of African legal practice. Customary courts and village tribunals across Africa continue to rely extensively on oral testimony, communal memory, and proverbial discourse. In Nigeria, customary courts adjudicate disputes over land, inheritance, and marriage through oral witness accounts corroborated by community recognition, rather than relying on documentary evidence (Oba, 2002). In Ghana, traditional tribunals maintain oral procedures that privilege dialogue, storytelling, and consensus as mechanisms of justice (Allott, 1960). These practices underscore the resilience of forensic orality as both a juridical and cultural form, demonstrating how oral traditions adapt and endure within hybrid legal systems that combine statutory law with customary procedures.

Such continuities are also evident in transitional justice mechanisms. South Africa's Truth and Reconciliation Commission foregrounded oral testimony as a legitimate form of evidence, prioritizing the voices of victims and perpetrators in the process of historical reckoning (Krog, 1998; Mamdani, 2000). Rwanda's Gacaca courts similarly positioned oral testimony at the heart of post-genocide trials, reaffirming the epistemic value of communal memory and narrative performance in legal reconstruction (Clark 2010). These examples illustrate that oral traditions have not only persisted but have also been strategically reactivated in modern contexts to address contemporary crises of justice and reconciliation.

Analytically, these continuities reveal that forensic orality persists not because written evidence is absent but because oral performance remains culturally authoritative in adjudicating social truth. Even within hybrid legal systems shaped by colonial and postcolonial institutions, oral testimony continues to function as a socially recognized epistemic resource for resolving disputes.

Taken together, the historical trajectories of forensic orality reveal a complex interplay of continuity and disruption. Precolonial systems placed oral testimony at the center of justice; colonialism sought to subordinate orality to written codes. Yet, customary courts and contemporary tribunals continue to affirm the vitality of the spoken word in adjudication. This trajectory underscores that forensic orality is neither an obsolete residue nor a mere supplement to written law; it is a resilient and evolving juridical practice that continues to shape the pursuit of justice in Africa.

6. Case Studies

The endurance and adaptability of forensic orality can be most clearly illustrated through case studies in which oral testimony has continued to shape legal processes, conflict resolution, and transitional justice. The cases of land and inheritance disputes, the role of storytelling and proverbs in conflict resolution, and witness testimony in post-conflict tribunals such as Rwanda's *Gacaca* courts and South Africa's Truth and Reconciliation Commission (TRC) demonstrate both the resilience and epistemic significance of oral traditions in contemporary African jurisprudence. These examples highlight the practical, cultural, and moral dimensions of forensic orality, underscoring its continued relevance to legal and social justice.

6.1. Oral Testimonies in Land and Inheritance Disputes

In many African societies, land and inheritance disputes are often adjudicated primarily through oral testimony, as written title deeds or documentary evidence are frequently absent, contested, or historically disrupted by colonial dispossession. Customary courts in Nigeria, for instance, rely heavily on oral witness accounts, community elders' recollections, and genealogical narratives to establish rightful ownership (Oba, 2002). The credibility of these oral testimonies is not assessed in isolation but validated through communal recognition, reputation, and corroboration from multiple voices within the community. Similarly, in Ghana, customary tribunals continue to draw on oral evidence, genealogical storytelling, and oaths administered in public forums to resolve disputes (Allott, 1960). In these cases, forensic orality functions not merely as a substitute for absent documents but as a legitimate and authoritative evidentiary system embedded in communal epistemologies of land, kinship, and inheritance. The oral testimony of elders and lineage heads often carries juridical weight equivalent to, or greater than, written deeds, underscoring the epistemic legitimacy of spoken evidence in customary adjudication.

6.2. Storytelling and Proverbs in Conflict Resolution

Beyond evidentiary testimony, orality assumes a performative role in conflict resolution, where storytelling and proverbs operate as juridical tools of persuasion, moral reasoning, and consensus-building. Proverbs condense communal wisdom into concise statements of principle, enabling disputants to interpret their situations through shared cultural idioms. As Finnegan (2012) observes, proverbs in African societies are not ornamental but function as normative guides in both everyday life and juridical processes. Among the Akan, proverbs such as "The truth is like a baobab tree; one person's arms cannot embrace it" are invoked in legal disputes to underscore the necessity of communal validation in truth-making (Wiredu, 1996). Storytelling, likewise, provides a narrative frame through which disputes are contextualized and resolved. In Igbo communities, for example, disputes may be mediated by recounting historical precedents or myths that exemplify communal norms of justice (Obi 1963). These oral forms act as epistemic devices that do more than resolve disputes: they reaffirm social cohesion, moral accountability, and cultural continuity. Forensic orality in this sense is not confined to the courtroom but is woven into the cultural practices that sustain harmony and legitimacy in communal life.

6.3. Witness Testimony and Memory in Post-Conflict Tribunals

The role of forensic orality is perhaps most evident in transitional justice mechanisms, where oral testimony serves as a vehicle for national healing, historical accountability, and moral reconstruction. Rwanda's *Gacaca* courts, established after the 1994 genocide, placed oral testimony at the core of their legal process. Survivors, perpetrators, and community members provided oral accounts of atrocities, confessions, and defenses in open-air hearings (Clark, 2010). Given the absence or destruction of written records, these testimonies were indispensable to establishing truth, assigning responsibility, and fostering reconciliation. The credibility of testimony in the *Gacaca* courts was assessed

communally, with participants collectively validating or contesting narratives based on their memories, local knowledge, and shared experiences. Though not without controversy—given the potential for false testimony and the retraumatization of survivors—the *Gacaca* process illustrates the juridical power of oral testimony in contexts of mass violence and social breakdown.

South Africa's Truth and Reconciliation Commission (TRC) similarly emphasised the centrality of oral testimony to its mandate. Victims of apartheid-era violence were invited to narrate their experiences, and perpetrators were encouraged to confess publicly in exchange for amnesty (Krog, 1998; Mamdani, 2000). The TRC transcripts reveal that testimony was not merely evidentiary but performative: by speaking their pain, victims asserted their humanity, while by confessing, perpetrators enacted accountability before the nation. Oral testimony thus became a juridical and moral force that extended beyond factual evidence into the realms of acknowledgment, catharsis, and symbolic justice. As Mamdani (2000) notes, the TRC's reliance on oral narratives highlighted the limits of legalistic truth and underscored the importance of memory and storytelling in achieving historical justice.

Taken together, these case studies illustrate the multifaceted functions of forensic orality across African legal and political contexts. Oral testimony in land and inheritance disputes affirms the legitimacy of spoken evidence in adjudicating property and kinship claims. Storytelling and proverbs operate as cultural devices for conflict resolution, embedding law within the moral grammar of society. Witness testimony in Rwanda's *Gacaca* courts and South Africa's TRC demonstrates the epistemic and performative power of oral narratives in reconstructing shattered societies. These examples confirm that forensic orality is not an archaic residue but an evolving juridical practice, central to how African communities produce truth, achieve justice, and sustain social cohesion in both everyday and extraordinary contexts.

7. Forensic Orality in Contemporary Courts

The persistence of forensic orality in African legal contexts demonstrates its adaptability and epistemic resilience. Yet, in the modern court landscape, oral testimony encounters new challenges, operates within hybrid legal frameworks that combine written and oral norms, and reveals critical, gendered dimensions that complicate its authority. These dynamics illustrate both the potential and the constraints of oral traditions in contemporary judicial systems.

7.1. Challenges of Oral Testimony in Modern Judiciary

While oral testimony remains indispensable in African courts, its credibility is often questioned when measured against the evidentiary standards of modern judiciary systems that privilege documentary records. Judges trained in Eurocentric legal traditions may regard oral testimony as unreliable, given its dependence on memory, performance, and communal validation (Chanock, 1985). The issue of translation further complicates oral evidence, as testimonies delivered in indigenous languages are mediated through interpreters, introducing risks of distortion, loss of nuance, or interpretive bias (Ncube, 2010). In multilingual societies such as South Africa and Nigeria, translation often shifts meaning in ways that can disadvantage litigants whose testimonies lack written

corroboration. Moreover, oral evidence is susceptible to biases in credibility assessment: demeanor, cultural performance styles, and gendered expectations can influence how testimony is received (Comaroff & Roberts, 1981). These challenges underscore the tension between forensic orality and the epistemological frameworks of formal courts, where evidentiary rules rooted in literate traditions often marginalize oral modes of truth-telling.

7.2. Limitations, Risks, and Vulnerabilities in Oral Testimony

Despite its epistemic richness and juridical significance, oral testimony is not without inherent limitations, risks, and vulnerabilities—factors that complicate its full integration into contemporary legal systems. One of the most persistent challenges concerns memory distortion, especially under conditions of trauma. Psychological research shows that traumatic memory is often fragmented, non-linear, and susceptible to involuntary suppression (Caruth 1996, 3–7). In transitional justice contexts such as the South African Truth and Reconciliation Commission (TRC), survivors frequently revisited experiences of extreme violence decades after their occurrence. Krog (1998) notes that such emotional strain could affect coherence and detail, thereby complicating assessments of accuracy (112–114). While this does not diminish the legitimacy of victims' voices, it demonstrates that oral testimony requires interpretive sensitivity to the psychological dynamics of recollection.

A second vulnerability arises from power asymmetries and potential manipulation within communal settings, especially in customary systems structured around gerontocratic authority. Scholars have long observed that elders or local power brokers may dominate narrative space, influence testimony, or suppress dissenting memories to preserve social harmony or political interests (Comaroff & Roberts, 1981, 145–148). In non-literate legal contexts where oral tradition is the principal evidentiary mechanism, such manipulation can skew outcomes, as the most authoritative voice—not necessarily the most accurate—may prevail. This extends to the TRC, where some perpetrators' testimonies were strategic, selective, or self-exculpatory. Mamdani (2000) critiques the Commission's limited capacity for rigorous cross-examination, arguing that truth-telling often unfolded within power-laden spaces where institutional constraints sometimes favoured perpetrators (179–181).

These vulnerabilities were even more pronounced in Rwanda's Gacaca courts, where community pressure and risks of reprisal shaped the production of truth. Clark (2010) observes that survivors and witnesses were vulnerable to intimidation, social retaliation, or community expectations that encouraged conformity to dominant narratives (208–212). Cases emerged where testimony was falsified to settle old scores or protect influential families, revealing structural weaknesses in the communal truth-making process. Furthermore, in non-literate contexts, evidentiary inconsistencies can result from the absence of documentary corroboration, leaving courts reliant on conflicting memories rather than verifiable records (Oba, 2002, 183). These risks do not negate the epistemic and juridical value of forensic orality. Instead, they emphasize the need for hybrid evidentiary standards, safeguards against manipulation, and judicial training that can navigate the complex cultural, psychological, and political dimensions of oral truth production.

7.3. Hybrid Systems: Written Law and Oral Traditions Co-existing

Despite these challenges, hybrid systems of law have emerged in Africa, where statutory law and oral traditions co-exist and mutually shape judicial outcomes. Customary courts in Nigeria, Ghana, and Kenya continue to operate alongside modern judiciary systems, drawing on oral testimony, genealogical narratives, and communal witnessing while remaining subject to statutory oversight (Oba, 2002; Allott, 1960). This coexistence creates a layered legal order, allowing litigants to strategically navigate between written and oral systems, depending on the nature of their disputes. For instance, land and inheritance disputes are often resolved through oral testimony in customary courts but may also be appealed in higher courts where written judgments prevail (Elias, 1956). Similarly, South Africa's post-apartheid judiciary has attempted to integrate customary law into its constitutional framework, acknowledging oral traditions while subjecting them to principles of equality and human rights (Himonga & Diallo, 2017). These hybrid systems demonstrate both the persistence of forensic orality and the need to reconcile its epistemic foundations with the universalizing demands of modern law. Rather than dismissing orality as incompatible, these systems highlight the possibility of a pluralist jurisprudence that values oral and written traditions as complementary.

7.4. Digital Transformations of Forensic Orality

In contemporary African judicial landscapes, forensic orality is undergoing rapid transformation as digital communication technologies proliferate, becoming new repositories of spoken truth. WhatsApp voice notes, for instance, increasingly serve as crucial evidence in domestic violence cases, defamation claims, and interpersonal disputes. These digital oral forms retain the performative, affective, and relational qualities of traditional testimony while adding temporal permanence and replayability. As Schoon (2021) notes, voice notes capture not only content but tone, hesitation, emotion, and rhythm—elements central to oral credibility in many African cultural contexts (88–90). Similarly, viral videos, whether recorded on mobile phones or circulated on social media platforms such as Facebook and TikTok, function as hybrid oral-visual testimonies that document police brutality, xenophobic attacks, or gender-based violence. These digital artifacts blend orality with visual immediacy, creating what Chouliaraki (2012) terms “mediated witnessing” (15–19), in which individuals speak the truth not solely to a court but to a dispersed global audience.

The growing reliance on digital recordings in African courts also intersects with debates on legal pluralism, where multiple normative orders coexist within the same legal landscape. Scholars of African legal pluralism argue that contemporary judicial systems operate through layered interactions between statutory law, customary law, and informal community-based justice mechanisms (Merry 1988; Himonga and Diallo 2017). Digital oral evidence—such as voice notes, recorded confessions, or mobile-phone videos—now circulates across these different legal arenas, blurring the boundaries between formal courtroom evidence and community-based truth-telling practices. In this sense, digital testimony represents a new phase in the evolution of forensic orality: it extends traditional oral modes of witnessing into technologically mediated environments while preserving the performative and affective qualities that have historically underpinned oral credibility.

At the same time, social media has created new arenas of public truth-telling, where individuals post confessions, allegations, or appeals for justice in digital public spheres. Platforms like Twitter have become spaces where the boundaries between oral testimony, activism, and juridical performance are increasingly blurred. Yet these innovations also pose challenges: authentication, manipulation, and deepfake technologies complicate the evidentiary status of digital orality. Courts must grapple with issues of authorship, editing, context, and fabricated audio—questions rarely encountered in traditional oral proceedings (Oyerinde, 2020, 204–206). For legal anthropology, these developments signal a profound shift: oral testimony is no longer confined to face-to-face communal settings but circulates through transnational networks that reshape authority, credibility, and community validation. Digital orality thus extends the logic of forensic orality into technologically mediated environments, demanding new interdisciplinary approaches that integrate law, anthropology, digital humanities, and cyber-forensics.

From an analytical perspective, digital technologies do not displace oral epistemologies but rather transform their evidentiary infrastructure. Voice notes, recorded confessions, and viral video testimonies extend the performative logic of forensic orality into technologically mediated environments, where speech becomes simultaneously ephemeral performance and durable evidence.

7.5 Gendered Dimensions of Forensic Orality

A critical dimension of forensic orality in contemporary courts is its profoundly gendered nature. Women have historically been custodians of oral traditions, serving as storytellers, ritual specialists, singers, mediators of cultural memory, and transmitters of proverbial wisdom (Okpewho, 1992). Their authority as nurturers and community memory keepers is deeply embedded in African cosmologies, where knowledge, especially domestic and genealogical knowledge, is gendered and relational. Nnaemeka's (2005) concept of nego-feminism, or "no-ego feminism," is especially relevant here, as it highlights African women's strategic use of negotiation, relational intelligence, and communal ethics to assert authority within patriarchal environments (377–380). Through this lens, women's oral performances in marriage disputes, inheritance conflicts, child custody negotiations, and rites of reconciliation represent not passive recitations but feminist acts of juridical agency.

Yet, despite this cultural centrality, formal courtrooms—structured by patriarchal norms and colonial legal legacies—often undermine, police, or silence women's oral testimony. Amina Mama (1995) argues that African legal spaces frequently reproduce gendered power asymmetries in which women's voices are dismissed as emotional, unreliable, or culturally inappropriate (42–45). This is especially pronounced in cases of domestic violence, sexual assault, and emotional abuse, where women's oral testimony is often the only available evidence. Bennett (2004) notes that courts influenced by Eurocentric evidentiary standards may privilege written affidavits over women's lived oral narratives, reinforcing epistemic injustice and marginalization (210–212). In such contexts, forensic orality exposes a stark paradox: women who are revered as guardians of cultural truth in customary spheres become epistemically disqualified in formal legal institutions.

At the same time, the gendered dimension of forensic orality also opens pathways for a distinctly African feminist jurisprudence. Patricia McFadden (2001) emphasizes that African feminist justice requires centering lived experience, embodied memory, and communal truth-telling as legitimate forms of evidence (55–58). This aligns with the principles of forensic orality, which value narrative, affect, and cultural performance in the production of truth. The South African TRC demonstrated this potential when it convened special hearings on women, allowing survivors of apartheid-era sexual violence and domestic oppression to narrate harms that had previously remained invisible (Goldblatt & Meintjes, 1998). These testimonies were not simply evidentiary—they were political, affective, and epistemic interventions that challenged patriarchal silencing and redefined the boundaries of public truth. Likewise, women’s participation in Rwanda’s Gacaca courts was crucial for documenting gender-based violence during the genocide, despite persistent risks of stigma, reprisals, and credibility attacks (Burnet, 2008).

Foregrounding women’s oral testimonies, therefore, links forensic orality to feminist legal theory, which argues that truth must be understood as embodied, relational, and situated rather than dispassionate or text-bound. Feminist jurisprudence insists that evidentiary standards must be broadened to accommodate the lived realities of marginalized groups whose knowledge systems do not conform to patriarchal or literate norms. Through this lens, forensic orality becomes more than a cultural practice: it becomes a feminist strategy for dismantling epistemic hierarchies, validating women’s stories, and expanding juridical imagination.

Forensic orality in contemporary courts thus reveals a dynamic interplay of continuity and transformation. It is challenged by credibility biases, translation issues, and patriarchal legal cultures, yet it persists as a potent mode of truth-making within hybrid legal systems. By highlighting both the vulnerability and the power of women’s oral testimony—and by integrating African feminist thought—the gendered analysis underscores the urgent need for legal systems to move beyond Eurocentric and patriarchal assumptions. Taken together, these dynamics reaffirm forensic orality not as a relic of tradition but as a living, feminist-aligned juridical practice whose epistemic legitimacy and moral authority continue to shape justice in contemporary Africa.

7.6. Global Resonances: Forensic Orality Beyond Africa

Although forensic orality has deep historical roots in African jurisprudence, its epistemic logics and juridical practices resonate across multiple Indigenous legal traditions worldwide. In the United States, for example, the Navajo Peace-making Courts operate through oral dialogue, communal consensus, and narrative-based conflict resolution. These forums prioritize spoken truth, relational accountability, and restorative justice over adversarial litigation. As Yazzie and Zion (1996, 69) argue, Navajo peacemaking uses storytelling, clan memory, and interpersonal dialogue as juridical tools that restore harmony rather than impose punitive outcomes. Here, oral reasoning structures the entire legal process, revealing striking parallels with African conflict-resolution mechanisms grounded in proverbs, genealogical testimony, and communal witnessing.

Similar resonances emerge in Aotearoa/New Zealand, where Māori jurisprudence recognizes *whakapapa*—genealogical oral knowledge—as a foundational evidentiary

resource. In land and territorial disputes, Māori elders provide oral histories that trace lineage, occupation, and stewardship through recited genealogies. Durie (1998, 42-45) notes that such oral evidence carries epistemic authority because it encodes identity, territory, and cultural continuity within communal memory. Like African oral tribunals, Māori processes demonstrate that truth is not merely factual but relational, embodied, and collectively validated. This convergence affirms oral tradition as a globally legitimate mode of jurisprudence.

The global legitimacy of oral evidence is further illustrated in the legal history of First Nations in Canada, particularly in the landmark case of *Delgamuukw v. British Columbia* (1997). In this Supreme Court ruling, the Court recognized Indigenous oral histories—*adaawk* and *kungax*—as valid, authoritative evidence in land claims. The Court acknowledged that oral tradition “is not simply a record of historical facts, but an expression of a distinctive culture and world-view” (Delgamuukw, 1997, para. 87). This ruling marks a critical shift in Western jurisprudence, aligning with African epistemological arguments that oral testimony is not inferior to writing but constitutes a legitimate archive of law, identity, and memory.

Comparable dynamics are found in Latin American Indigenous tribunals, such as those of the Quechua, Aymara, and Maya communities, where oral testimony, community consensus, and ancestral memory shape legal outcomes. Van Cott (2000) notes that Indigenous courts in the Andes employ spoken accounts, collective deliberation, and public storytelling to resolve disputes and restore social equilibrium (112–115). These oral systems function alongside state law yet retain significant authority because they embody culturally rooted notions of justice, reciprocity, and communal dignity.

Together, these global examples underscore a powerful truth: Africa is not an outlier but a central contributor to global jurisprudential thought on orality. Across continents, oral traditions serve as legitimate legal archives, evidentiary frameworks, and restorative mechanisms. By situating forensic orality within this global landscape, the African experience emerges not as peripheral but as a leading intellectual resource in rethinking the relationship between speech, memory, evidence, and justice in both Indigenous and modern legal systems.

8. Implications and Critical Reflections

The concept of forensic orality carries far-reaching implications for how law, truth, and justice are understood in Africa and beyond. Far from being a vestige of precolonial practice, forensic orality endures as a living archive of justice, continuing to shape how disputes are resolved, histories are narrated, and social harmony is restored. By foregrounding orality within legal discourse, one not only recovers its epistemic legitimacy but also reconfigures the normative frameworks that govern evidence, authority, and reconciliation. This section explores three broad implications: forensic orality as a living archive of justice, its contribution to restorative democracy and transitional justice, and its potential to reshape evidentiary norms within both African and global contexts.

8.1. Forensic Orality as a Living Archive of Justice

Forensic orality functions as a living archive—dynamic, embodied, and constantly renewed through performance and memory. Unlike written records, which are often static, oral testimonies preserve justice as a participatory process in which communities actively engage in remembering, interpreting, and adjudicating (Finnegan, 2012; Barber, 2007). In land and inheritance disputes, for instance, the authority of oral narratives lies not in their permanence but in their capacity to be recalled, revalidated, and recontextualized by successive generations (Oba, 2002). This living archive is particularly crucial in societies where written documentation has been historically disrupted by colonial dispossession, displacement, or illiteracy. Oral testimonies thus serve as repositories of both factual memory and moral authority, ensuring continuity between past injustices and present claims. By framing orality as an archive, this study underscores its epistemic resilience and challenges the reduction of oral traditions to “unreliable memory.” Instead, forensic orality must be understood as a juridical resource that embodies both history and justice in dialogical, evolving forms.

8.2. Contribution to Restorative Democracy and Transitional Justice

The role of forensic orality in transitional justice illustrates its profound contribution to restorative democracy. In South Africa’s Truth and Reconciliation Commission, the oral testimonies of victims and perpetrators served as more than legal evidence—they became acts of recognition, healing, and symbolic reparation (Krog, 1998; Mamdani, 2000). By enabling marginalized voices to narrate experiences of violence and oppression, oral testimony democratized the process of truth-making, affirming the moral equality of those whose suffering had been silenced under apartheid. Similarly, Rwanda’s Gacaca courts mobilized communal orality as a mechanism of accountability, with survivors and perpetrators engaging in direct dialogue through testimonies, confessions, and judgments (Clark, 2010). Though their effectiveness is contested, these processes highlight how forensic orality sustains restorative democracy by grounding justice in participatory dialogue, community validation, and moral accountability. In this sense, forensic orality is not only evidentiary but also constitutive of democratic practice, affirming the principle that justice is not fully realized in the codified text but in the lived speech of those who experience injustice.

8.3. Rethinking Evidentiary Norms in African and Global Contexts

Perhaps the most far-reaching implication of forensic orality lies in its potential to reshape evidentiary norms, both within African legal systems and in global jurisprudence. Modern judiciary frameworks often privilege documentary evidence, viewing oral testimony as supplementary or suspect. This epistemic hierarchy perpetuates what Fricker (2007) terms “epistemic injustice,” wherein oral traditions are devalued in favor of Eurocentric standards of credibility. Yet African experiences reveal that oral testimony is not merely an alternative to written evidence but a distinct epistemology of truth production, with its own logics of validation, credibility, and communal authority (Comaroff & Roberts, 1981; Wiredu, 1996). Recognizing this requires a reevaluation of evidentiary norms: courts must develop methodologies that treat oral testimonies not as fragile supplements but as legitimate and robust sources of truth.

This reconfiguration carries implications beyond Africa. As transitional justice becomes a global concern, mechanisms such as truth commissions, international tribunals, and community-based reconciliation initiatives increasingly grapple with the centrality of testimony and memory (Hayner, 2011). The lessons of forensic orality—its participatory character, its performative authority, and its grounding in communal validation—offer critical resources for designing inclusive models of justice worldwide. By elevating orality from a marginalized tradition to a recognized juridical practice, African experiences contribute to global debates on law, memory, and reconciliation, challenging the hegemony of written-centric evidentiary frameworks.

The implications of forensic orality are therefore both local and global. As a living archive, it preserves justice through memory and performance; as a contributor to restorative democracy, it democratizes truth-telling and reconciliation; and as a challenge to evidentiary norms, it compels a rethinking of how law recognizes and validates truth. In affirming forensic orality as a central juridical practice, this study argues for a broader jurisprudence that is epistemically inclusive, culturally responsive, and globally relevant. By embedding orality within the fabric of justice, both Africa and the wider world can move toward legal systems that are not only more inclusive but also more attuned to the complex realities of human experience.

8.4. Policy Recommendations and Legal Reform Pathways

Recognizing the epistemic and juridical value of forensic orality requires not only theoretical articulation but also concrete policy reforms that can integrate oral traditions into contemporary legal systems. One essential intervention is the formal incorporation of forensic orality into judicial processes through statutes, procedural codes, and evidentiary guidelines. Courts can adopt explicit provisions recognizing oral testimony, genealogical narratives, and proverbial reasoning as legitimate and rigorous forms of evidence, particularly in contexts where written documentation is historically absent or structurally inaccessible. This reform is especially relevant to land and inheritance disputes, where communal memory, lineage histories, and oral agreements often carry greater historical accuracy than written records imposed during or after colonial rule. Integrating forensic orality into land restitution frameworks would therefore strengthen both evidentiary justice and the cultural legitimacy of legal outcomes.

A second set of reforms concerns linguistic and cultural mediation. African courts operate in highly multilingual societies where translation is not merely a linguistic matter, but also a cultural one. To mitigate distortions, misunderstandings, or omissions that occur during legal interpretation, states should train and accredit multilingual interpreters with expertise in cultural performance analysis. Such specialists would be capable of interpreting not only words but tone, idioms, symbolism, and performative cues essential to oral credibility. In parallel, judicial officers must receive systematic training in oral epistemologies, enabling them to assess oral testimony within its proper cultural logic rather than through Eurocentric assumptions about credibility, memory, or demeanor. Judicial education curricula should therefore include modules on African orature, legal anthropology, gendered oral traditions, and the dynamics of communal witnessing.

Furthermore, legal reforms must address the gendered vulnerabilities that accompany oral testimony. Protecting women's voices in both customary and formal courts requires policies that shield witnesses from intimidation, retaliation, and patriarchal silencing. Courts should adopt special protective measures—including closed hearings, confidential testimonies, and community liaison officers—to ensure that women can speak freely without fear of social or familial consequences. Feminist jurisprudence emphasizes that justice cannot be achieved when women's oral narratives are devalued; therefore, legal frameworks must adopt inclusive evidentiary standards that validate embodied, experiential, and relational forms of truth.

Finally, developing statutes and legal guidelines that acknowledge and permit the use of proverbs, metaphors, and communal testimony will create a more pluralistic evidentiary regime that better reflects African jurisprudential realities. Since proverbs often encode moral reasoning, historical record, and juridical wisdom, recognizing their interpretive validity within courtroom deliberations enhances cultural continuity and the legitimacy of the justice system. Taken together, these policy pathways demonstrate that forensic orality is not merely a theoretical construct but a viable foundation for legal reform, epistemic justice, and culturally grounded jurisprudence across the African continent.

Conclusion

This study has demonstrated that forensic orality is a powerful epistemic and juridical resource whose significance extends far beyond its perceived status as a traditional or pre-literate cultural form. From precolonial adjudication through colonial disruption and into contemporary hybrid systems, oral traditions have proven indispensable to the production of truth, justice, and social cohesion in African societies. Whether embodied in genealogies used to resolve land disputes, proverbs employed to guide moral reasoning, narrative testimony in transitional justice processes, or digital voice notes circulating as evidence in modern courts, forensic orality continues to shape legal outcomes in ways that written forms alone cannot.

As an epistemic mode, forensic orality challenges deeply rooted Eurocentric hierarchies that privilege the written word as the sole measure of legal credibility. It underscores that knowledge in African contexts is dialogical, relational, performative, embodied, and validated communally. Recognizing the epistemic legitimacy of oral testimony is therefore essential for addressing the forms of epistemic injustice that marginalize African ways of knowing. As a juridical practice, forensic orality illuminates law as a participatory, culturally grounded process—one enacted not only through formal institutions but through social memory, storytelling, and collective witnessing.

Moreover, the study has shown that forensic orality is not only relevant to Africa but also resonates globally. Indigenous legal systems, ranging from those of the Navajo Nation and Māori communities to First Nations in Canada and Indigenous tribunals in Latin America, rely on oral epistemologies to adjudicate disputes and preserve historical memory. Africa's experiences thus contribute centrally—not peripherally—to global jurisprudence on evidence, memory, and restorative justice.

The article also acknowledges the limits and vulnerabilities of oral testimony: traumatic memory, patriarchal silencing, susceptibility to manipulation, power asymmetries, and challenges arising from digital authentication. Yet these limitations do not diminish its juridical value; rather, they highlight the need for pluralistic reforms to evidentiary standards. The proposed policy recommendations—including judicial training in oral epistemologies, culturally competent interpretation, protection of women witnesses, and statutory recognition of proverbs and communal knowledge—offer pathways toward more inclusive and culturally responsive legal systems.

Ultimately, forensic orality affirms that justice is not solely written in statutes; it is spoken, remembered, negotiated, embodied, and performed. In recognizing forensic orality as a living archive and a feminist-aligned, culturally grounded legal epistemology, African societies—and the global legal community—can move toward evidentiary regimes that are more democratic, more just, and more attuned to the complex realities of human experience. Far from being a relic of the past, forensic orality stands as a vital resource for reimagining legal futures shaped by plurality, cultural depth, and epistemic justice.

Endnotes

¹South Africa's Truth and Reconciliation Commission (TRC) was a post-apartheid restorative justice body established in 1995 to investigate gross human rights violations committed between 1960 and 1994. Rather than focusing solely on punishment, it aimed to uncover the truth, promote national healing, and foster reconciliation by providing victims with a platform to narrate their suffering and allowing perpetrators to apply for amnesty if they made full and transparent disclosures. The TRC became one of the world's most significant models of transitional justice, striking a balance between truth-telling, accountability, and social reconstruction in a deeply divided society.

²Rwanda's Gacaca Courts were community-based justice systems established after the 1994 genocide to address the overwhelming number of genocide-related cases. Rooted in traditional conflict-resolution practices, the Gacaca process empowered local communities to judge perpetrators, encourage truth-telling, promote accountability, and facilitate reconciliation. These courts focused on restorative rather than purely punitive justice, helping Rwanda uncover the truth about the genocide, rebuild social trust, and reintegrate offenders into their communities.

³Navajo peacemaking courts are traditional justice institutions within the Navajo Nation in the United States, grounded in Diné (Navajo) cultural values, spirituality, and community harmony. Instead of adversarial punishment, they focus on dialogue, restitution, and restoring relationships among all parties involved. Peacemakers guide disputants toward consensus, emphasizing balance (*hozho*), respect, and communal responsibility.

⁴Māori whakapapa jurisprudence refers to an Indigenous legal philosophy in Aotearoa/New Zealand rooted in *whakapapa*—the Māori concept of genealogy, interconnectedness, and relational identity. It views law as emerging from relationships between people, ancestors, land, spiritual forces, and the natural world. Justice is

therefore relational and holistic, prioritising collective well-being, balance, and the maintenance of ancestral obligations rather than individual punishment.

⁵First Nations land claims refer to the legal and political processes through which Indigenous peoples—often referred to as First Nations in Canada and parts of the Commonwealth—seek recognition of their ancestral land rights. These claims aim to restore control over territories taken through colonisation, treaties, or state expropriation. Land claims can involve the return of land, financial compensation, or formal recognition of Indigenous governance and resource rights.

⁶Indigenous courts in Latin America are legal institutions established by Indigenous communities to administer justice in accordance with their own customary laws and traditions. These courts operate within national legal systems—especially in countries like Bolivia, Ecuador, Colombia, and Guatemala—where constitutions recognise *legal pluralism*. They handle disputes within Indigenous territories based on communal values, restorative justice, and harmony, rather than punishment, reflecting the coexistence of state law and Indigenous jurisprudence.

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