

REINTEGRATING AFRICAN TRADITIONAL DISPUTE RESOLUTION MECHANISMS IN CONFLICT RESOLUTION

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Abstract

Traditional dispute resolution mechanisms have been around in Africa even before the era of colonial heritage. The formal justice system tends to take a punitive and deterrent approach in criminal cases, and a rights-based compensatory approach in civil matters, while traditional dispute resolution practices in both criminal and civil cases are usually based on restorative justice, reconciliation, and reintegration into the community. Africans regarded conflict as part of life and an aspect of their cultural activities, which often showcased evidence of virility, responsibility, and versatility. They study and observe to understand the nature and fundamentals of conflict and its impact on societal development. In traditional African society, peacemaking models, religion, and philosophy were inseparable. This article seeks to explore the various institutions of conflict resolution in the African society as well as the various core principles that guide the African dispute resolution process.

Keywords: African dispute resolution, Conflict resolution, Traditional Dispute mechanism, Conflict management, Peacebuilding in Africa, Dispute resolution models.

1.0 Introduction

There is no doubt that conflict has become a pervasive defining process of several societies despite its awful consequences in some circumstances. Despite the techniques and instrumentalities available to modern nation-states in their western-styled approaches to conflict resolution or management in Africa, the phenomenon has remained unassailable (Adejo, 2004). It becomes clear that western methodologies are inadequate, and recourse to traditional diplomacy and attitudes that appealed to the sense of community of the African deserves a revisit to ensure a stable state system (Adejo, 2004).

Traditional dispute resolution mechanisms have been around in Africa even before the era of colonial heritage. Authors, McQuoid-Mason (2021) quoting (Aiyedun and Ordor, 2016, p. 3) made the following statement:

“It is trite that developing countries, particularly in Africa, have a mixture of colonial-inspired formal justice systems and traditional dispute resolution practices which have been referred to as “a fabric of pluralism”.

The formal justice system tends to take a punitive and deterrent approach in criminal cases, and a rights-based compensatory approach in civil matters, while traditional dispute resolution practices in both criminal and civil cases are usually based on restorative justice, reconciliation, and reintegration into the community by transgressors of other people's rights (McQuoid-Mason, 2021). Theorists have defined restorative justice in the modern context, the customary law evolved, within community settings, which may have been individual villages, or tribes, or may have come at larger areas such as tribes living in neighboring regions (Ushi, 2015).

2.0 AFRICAN SOCIETIES AND DISPUTE RESOLUTION

African societies are not only blessed with a substantial amount of mineral and human resources but also with constructive traditional worldviews which are comprised of beliefs and ideologies that make the society peaceful to live in. Right from time immemorial, the time preceding the colonial era, the African continent had had their numerous belief systems (African belief systems are those sets of ideologies and principles that guide the people in their everyday life) that brought order and tranquility in their lives (Anthony, Kanu, & Ndubisi, 2020). Most of these beliefs and practices, despite the challenges of yesteryears, still exist.

The modern African society has developed from a plethora of influences emanating from differing civilizations over time, so it would not be out of context to evolve a different and distinct system, which even though could run the risk of being regarded as atypical, would function maximally and effectively producing definite results, nonetheless (Olufemi & Imosemi, 2013).

Conflict in the African traditional society could be derived from the family's level even though it has been considered as the basic unit of African political culture. The individual in the family had the right of protest showcasing annoyance over many things. This could be over property inheritance, interpersonal relations, and marital situation/matter. From the economic point of view, it has been found out that conflict also became inevitable in traditional African societies. This in a way justifies Coser's approach to the phenomenology of conflict even across cultural boundaries of the world, land encroachment, territorial

dislocation, house sequestration, trade imbalance and non-payment of tributes or loans can be identified as the *raison d'être* of conflict origination in traditional African societies.

Justice Lawal Gummi, Chief Judge of the Federal Capital Territory had noted this in his lecture entitled 'Restorative Justice and the Criminal Justice System in Africa: Nigeria as a case study' observed that all forms of conflict resolution designed to restore, strengthen, and build relationship, existed in African traditional societies before colonization. He further noted that dispute resolution has its basis in traditional African practice and customs, while opining that the ancestors in Africa never built prisons, nor court, since punishments were designed to achieve restitution, reconciliation and harmony (Olufemi & Imosemi, 2013).

According to Justice Gummi 'in both civil and criminal aspects, we are gradually retreating to our previous systems, hitherto viewed as obnoxious, for indeed, western civilization is failing us; congesting our court, turning our children and other minor offenders into hardened criminals and traumatizing and dehumanizing unfortunate victims. Omale (2009), opined that in most African cultures (including some societies in modern Africa), the community or group is seen as a continuing self-perpetuating entity embracing both the living and the dead. The law of the community, therefore, is conceived and accepted as the possession and heritage of an endless chain of generations and an act of rebellion against the legal status quo is regarded as abominable not only in the eyes of the living but also of the supernatural ancestral spirits who it is believed perpetually hover around and to protect the community.

Dr. Golwa speaking at the opening ceremony of an international conference on Traditional Methods of Dispute Resolution stated that intervention mechanisms that are culturally based and relate to the African environment are relevant in these changing times. Secondly, the international community is increasingly seeking conflict management frameworks that best address conflict resolution, reduce cost and threat and do no harm, hence the need for the reintegration of African traditional methods of dispute resolution ("Nigeria, China Seek Traditional Methods of Dispute Resolution," 2013).

Africans regarded conflict as part of life and an aspect of their cultural activities, which often showcased evidence of virility, responsibility and versatility. They study and observe to understand the nature and fundamentals of conflict and its impact on societal development. Many African citizens have lost faith in the ability of their nations' courts to provide timely or just closure to their grievances. In a southern Nigerian community in May 2006, for example, approximately 100 organized, angry youths confronted village-hired armed watchmen after several months of complaints that the watchmen repeatedly harassed villagers, beat them with ropes, extorted money, and sexually assaulted some young girls. During the confrontation, one of the youth was shot by a watchman. The police responded by arresting several other young men. This further aggravated the sense of injustice in the community, stoking fears of retributive violence. Even when courts are involved—while they may address the legal question, since they are not focused on conflict resolution or mitigation—they may miss the underlying catalyst. At times, court judgments can escalate disputes. As one Nigerian lawyer noted, "when the judge proclaims a winner, that is the beginning of the real conflict." (Uwazie, 2011)

The traditional customary laws across much of Africa incorporated elements of restorative justice. In the process of resolving conflict in traditional African societies, certain rules were observed by all participants in the drama of conflict resolution. The rules were tailored to equitable distribution of justice and the maintenance of law and order. Besides resolving the conflict, a vital aspect of the features of conflict resolution in indigenous African societies, was the education of all and sundry (present at the scene of resolution) about the cultural

heritage of the society viz. respect of personalities at the scene of conflict resolution, reverence to the supernatural, cross-examination of evidence and interpretation of the cultural norms towards persuading the parties to the conflict, witnesses and the audience (especially on the amount of explanation turreted with the truth of the matter). The focus of the adjudicators, as regularly discovered, was on appraising truthful evidence. Truth, therefore, became the *sine qua non* of conflict resolution in indigenous African societies. It was only the recognition of truth which attested to the fact of honoring the invisible presence of the supernatural and evidence of showcasing a mastery of the art of conflict resolution in indigenous African society (Malito, 2013).

The nature of the mechanism for resolving conflicts in indigenous African societies such a crucial point of peculiarity anchored on African cultural heritage. Such a peculiarity was informed by the popularity of the custom and norms associated with conflict resolution. No member of the society was in doubt of the manner of adjudging truthful evidence and verdict as well as the dispatch with which the adjudicators handled the conflict issues (Adewoye, 1977).

Ayisi (1992) opined that the African conflict resolution model was anchored on the dramatization of the issues involved in conflicts. Historically, the performance as you will get to know had always been stage-managed by notable dramatic personae, which included experienced elders, priests, age – grades, chiefs and kings in African societies. The stage as set for the drama of adjudication included homes (as family court), markets (as commercial court), streets (as open court) as Palaces (as royal court). Today, the stage now includes the media houses (as public court) and colonial court of heritage (as customary courts). It is pertinent for you to understand that the performers of conflict resolution from an African perspective were the likes of African judges and adjudicators, the litigants (complainants and plaintiffs), or parties to the conflict, and witnesses were groomed in the tradition from where the stage language and techniques evolved. It is also pertinent to emphasize that when properly approached with the right method, conflicts in African indigenous societies had always been resolvable. The adjudicators saw to it that truth was the fundamental ingredient of surmounting the conflict. They were also doggedly determined not to leave the scene of conflict resolution until a solution had been found to the raging problem inherent in the conflict.

Victims of crime under the indigenous system of conflict resolution were the focus of the justice processes. Unlike the modern Nigerian criminal justice system, victims, offenders, and the community are involved in defining harm and repair. Parties acknowledged the emotional and material loss of the victim and made restitution. The goal of indigenous justice was the reparation of harm done to victims and communities by offenders (Okeke, 2021).

3.0 TRADITIONAL INSTITUTIONS FOR CONFLICT RESOLUTION

Institutions are set up or established or organization for achieving some goals of development. They may refer to personalities or infrastructures upon which the development of the society is anchored. Institutions of conflict resolution in traditional African societies were instruments so fundamentally based on promoting the orbit of development. The institutions were personality-based and systematically tuned. These institutions were characteristically modeled along the line of the public will and associational trust especially when they have been coached in truthful operation and pragmatic dynamism. These institutions included the family, palace, market, numerous associations, and supernatural influences. Experience was, however, aligned with the understanding, interpretation and

application of the institutions towards the facilitation of peace and the enhancement of harmony in an enabling environment (Ayittey, 2005).

3.1 *The Family*

The family as a traditional institution existed in African society as a practical model of understanding familial projection and unification of goals and forces desirable of positive outcomes. Eked out from a lineage, the family system in Africa exhibited convivial unity so much at a closed range that mutuality was enhanced. Living in an expansive compound with identifiable reasonable responsibilities, the family system in Africa, as you will find out, typified the notion of keeping constant touch to ascertain positive knowledge of welfare and enthusiasm for virtuous wisdom associated with mutuality. Hence, the idea of being your brother's keeper was quite inherent in the family system. Such a mutually exclusive trust often enhanced not only the equitable distribution of justice but also collective responsibility, for a common destiny.

The family unit in Africa represented a vibrant political institution that was the bedrock of governance. The highest point of the political institution was the palace – a royal institution with legitimate authority and a symbol of state formation. The palace represented the splendor of cultural heritage in pre-colonial African societies. The king had the sovereign power to put a hold and a zeal on the issues of conflict. This was done along with the assistance of his chiefs, who met in the palace, to resolve conflicts especially of criminal tendencies (Driberg, 1934).

3.2 *The Market Institution*

The market institution in African society had enabled proper legitimization of sovereignty. This market institution, however, gave rise to some agents (within the market system) of peace and harmony. In other words, market administrators and leaders (with diverse names across cultural boundaries) facilitated peace and ennobled equitable distribution of justice – the preservers of harmonious tradition in pre-colonial African societies. Selling and buying were not only done in the market, the mechanism for maintaining a conducive atmosphere for bargaining was put in place. Hence, there were commodity associations helped by their executive overlords. Their roles were quite noticeable and appreciated not only by African kings but also by the populace.

3.3 *Social Institutions*

Social institutions germane to conflict resolution in indigenous African societies have been a relevant aspect of cultural heritage. Social conflicts were often surmounted through the machinery of social institutions. These institutions included age-grade associations, professional associations (such as the guild of hunters, etc.), and secret clubs (or societies). The legitimate power and social responsibilities of the identified strata of the society rested on the recognition accorded them by members of the society. Indeed, their prerogatives of position engineered the positive results which they normally propelled and orchestrated. They also had the wisdom and diplomacy of tilting the magnitude of conflicts to manageable and controllable limits. In their sphere of influence, peace and harmony reigned supreme. Punishment was, however, meted out to offenders as a corrective measure to discourage a wishful act that might derail collective responsibility for positive results in the development process.

3.4 *Traditional Religion*

Traditional religion played a tremendous role in conflict resolution across cultural boundaries in Africa. The religion, which brought about sets of beliefs, not only explain the influence of the supernatural but also showcased religious sanctuaries such as shrines and groves the venuethat turned out to be the spots of many extra-judicial activities. Traditional religion promoted truth, equity, and justice which were the primers of conflict resolution in traditional African societies(Nwachukwu, 2020).

In traditional African society, peacemaking models, religion and philosophy were inseparable. Thus, dealing with extra-judicial methods in African societies, the force of traditional religion is inevitable. Adewoye (1977) succinctly subscribed to this view. It thus shows quite clearly that there were known and unknown causes of conflict in the African setting. In the known causes of conflict, the kings, chiefs and elders stood the ground of resolving them, while in the unknown causes of conflict, the supernatural and their ministers/representatives (such as priests, priestesses and diviners) stage-managed the conflict resolution through strategies considered very metaphysical in approach and administration.

4.0 **PRINCIPLES OF CONFLICT RESOLUTION IN AFRICAN SOCIETY**

The principles of conflict resolution in pre-colonial African societies were sufficiently tailored towards a proper understanding of African cultural heritage so that they were quite originally inherent in their customs and norms. The principles were also characterized by the mood and personality of the Africans such that their practice and adaptation were adequately suited to the environment and the psychic force. Thus, the principles followed the line of fruition and functional press to exhibit the cultural heritage of the Africans. The principles, therefore, set in motion the desirability and readiness of the Africans to institute social order and control of their affairs, in such a way, that public morality and etiquette strengthened the lord of relationship and mutual trust. Principles of conflict resolution in traditional African society were anchored on the confidence of the parishioners, verification of truth, attainment of impartiality, and the enhancement of transparency, reconciliation and the display of fairness and social justice as well as adherence to forgiveness and tolerance.

The degree of the application of the principles of conflict resolution to life expectations, however, depended largely on the interest and enthusiasm as well as the knowledge acquired by the practitioners. This is why it is often difficult to measure the degree of wisdom of the parishioners especially when the colonial culture had intruded into the original African principle of conflict resolution (Driberg, 1934).

The nature of the principles of conflict resolution in indigenous African societies was anchored on the flexibility and elasticity of the rules and guidelines of operation, the divine inspiration, and the conceptualization of peace in the society. The principles of conflict resolution in traditional African societies represented the engineering process of the dynamics and legitimacy of enforcing the rules for operational scheming. The divine ordering which backed up the operational model of the principles of conflict resolution characterized the dynamism of the peace process in traditional African societies (Olaoba, 2008).

Fundamentally, parties to the conflict usually submitted themselves for cross-examination based on the fact that they had radiant confidence in the conflict resolution principles that were to be applied to the conflict in vogue. No one was adjudged an isolated entity in African society. This was why the principle of collective responsibility was in place. Indeed, you will find out that the concern of the populace was always directed to the parties in conflict borne out of sympathy and reverence to the forebears, who looked from afar and had the

wherewithal to punish the wrongdoers or offenders among the parties to the conflict. The wrongdoing when properly ascertained needed collective action to surmount. This was why J.H. Driberg maintained that such wrongdoing must be propitiated by all the members of the society in the area of contributing towards procuring ritual materials. This was also akin to the practice of being your brother's keeper in a time of crisis (Driberg, 1934).

Truth which is associated with the positive conduct of life was quite at home (and in place) with conflict resolution mode in traditional African society. Truth had been adjudged by African elders as the objective of the scientific trust and ethical modesty showcasing movement of time in the development process. The African forebears loved and embraced truth as covenant logo. It was upheld as a salient principle of conflict resolution in traditional African societies. Hence, it deserved suitable verification to authenticate verdict in the process of conflict resolution in traditional African societies.

Impartiality, neutrality, and transparency were tripod principles of conflict resolution in indigenous African societies. They were adopted by the African forebears to showcase the tension associated with peacemaking and peace-building. Indeed, the practitioners of indigenous peace need the tripod principles to stand the test of time towards ensuring completeness and totality of verifying the truth and asserting vibrant claims. Max Gluckman attested to this fact in his research among the Barotse people. Thus, African judges and adjudicators upheld the tripod principles toward playing safe and restoring peace and order in the muddy atmosphere (Gluckman, 1956).

Parties to the conflict in traditional African societies had the mutative of persuasion and submission to reasonable claims to justice. Hence, they had the chance of letting off the steam of conflict, forgiving, loving, and tolerating one another for mutual orientation and adaptation. This you should understand, was the basis of reconciliation and restoration of harmonious relationship or esprit de corps. This principle had long been anchored of social engineering and mannerism on traditional African societies.

Fairness, equity, and justice were also the tripartite principle of conflict resolution included in the traditional African society. Parties to the conflict, were usually given fair hearing and representation (through a witness) to the degree that no one had its case treated in absentia as during so announced to misplace of justice and assault to the enforcer of justice (the Supernatural). The Africans believe that justice delayed was justice out rightly denied, which spell doom for the community. Failure to ever appear at the scene of conflict resolution amounted to what Schapera (among the Tswana) and Olaoba (among the Yoruba) regarded as contempt of court. The end of justice in traditional African society, therefore, justified the principles of conflict resolution in place. Thus, parties to the conflict were enjoined to give peace a chance by shifting the ground of conflict and limping towards peace and harmony in a principle of "give a little, get a little" (Schapera, 1977); (Olaoba, 2008).

5.0 METHODS OF REINTEGRATING TRADITIONAL METHODS OF DISPUTE RESOLUTION

5.1 *Diplomacy*

The meaning of diplomacy is relevant to the process of conflict resolution in traditional African societies. Diplomacy is no less than the art of negotiation for the successful innovation of things or ideas. It involves some elements of tactfulness, scheming, and display of initiative. It is, indeed, targeted towards achieving a reasonable end of affairs. The connection between diplomacy and conflict resolution is quite simple. The relationship between two communities or states was made possible in traditional African societies through

the principles of diplomacy. Diplomatic relations among states, therefore produced mutual understanding as a result of the display of negotiating art. Given conflict resolution in contemporary times, African methods of diplomacy can be revived and resorted to for effective dispute resolution.

5.2 *Arbitration*

The arbitration method had produced great levels of trust, confidence, and mutual understanding in traditional African societies. Arbiters or arbitrators had lived up to their expectation of being impartial and had interpreted the customs and norms creditably suitable to issues of conflict handled in the arbitral proceedings. The juristic tradition anchored on arbitration had made it possible to yield positive results. The implementation of the arbitral decisions of the arbitrage practically fitted into the dynamics of cultural heritage. In the traditional African society, the decisions reached and concluded by the arbitrators in arbitral proceedings were not done in isolation of the supernatural who monitored, controlled, and influenced such decisions. The level of justice with which the decisions were coached was, therefore, beyond man's or human's efforts. They were divinely derived and implemented on the axis of divine order. The nature of arbitration and the approach of the arbitrator to the truthful disposition of decisions were anchored on arbitral proceedings in traditional African societies. Thus, the arbitrators must be above board to design workable decisions acceptable to a greater majority in the crowd of audience listening and watching the proceedings.

5.3 *Reconciliation and Restoration*

Restoration of peace and strained harmonious relationship characterized conflict resolution methods in traditional African societies. Reconciliation was carried out in traditional African societies to pacify the parties in conflict without destabilizing the social order and cultural engineering. It recognized the dynamics of pacification and the soothing "medicine" for the vexed parties to the conflict. The process of pacification and persuasion revolved around the expertise and experience of the pacificator. As a neutral party (serving as a third party) the pacificator was imbued with the strength and energy to restore peace and harmony to the society. The third party in the reconciliatory process must, therefore, possess the following attributes:

- ability to listen;
- capacity for interaction;
- passion for understanding the issues of the conflict;
- knowledge of customs and norms of the society;
- discerning mind for the interpretation of facts;
- understand the mood of the parties to the conflict;
- readiness to appraise objectivity; and
- determination to restore peace and harmony.

The reconciliatory team was to exhibit transparent concern for the parties to the conflict on one hand and the society on the other. The African reconciliatory method is needed in contemporary times as a tool for conflict resolution and social reintegration of offenders instead of the western retributive justice system of punishment.

6.0 CONCLUSION

We cannot deny the existence of pre-colonial African traditional dispute resolution mechanisms which gained widespread acceptance by various communities. The slow-paced nature of retributive court system justice has brought up the need to revive these traditional models. Impartiality, neutrality, and transparency which are tripod principles of conflict resolution in indigenous African societies need to be reinstated in dispute resolution mechanisms. This work has highlighted the need to reintegrate our African disputed resolution frameworks and push them to the forefront in bringing traditional restorative justice back into society.

REFERENCES

- Adejo, A. M. (2004). Traditional African Diplomacy and Conflict Resolution. *Journal of Cultural Studies*, 6(1), 134-VI.
- Adewoye, O. (1977). *The judicial system in Southern Nigeria, 1854-1954: law and justice in a dependency*: Longman London.
- Anthony, K. I., Kanu, I. A., & Ndubisi, E. J. (2020). African Indigenous Knowledge and Peace-Building.
- Ayisi, E. O. (1992). *An introduction to the study of African culture*: East African Publishers.
- Ayittey, G. B. (2005). The indigenous economic system *Africa Unchained* (pp. 337-364): Springer.
- Driberg, J. H. (1934). The African conception of law. *Journal of Comparative Legislation and International Law*, 230-245.
- Gluckman, M. (1956). The reasonable man in Barotse law. *J. Afr. Admin.*, 8, 151.
- Malito, D. (2013). *Evidence from an alternative path to reconciliation: the case of Somaliland*. Paper presented at the XXVII Annual Conference of the Italian Society of Political Science (SISP), University of Florence.
- McQuoid-Mason, D. (2021). Could traditional dispute resolution mechanisms be the solution in post-colonial developing countries—particularly in Africa? *Oñati Socio-Legal Series*, 11(2), 590-604.
- Nigeria, China Seek Traditional Methods of Dispute Resolution. (2013, 11/15/2013 Nov 15). *AllAfrica.com*. Retrieved from <https://www.proquest.com/wire-feeds/nigeria-china-seek-traditional-methods-dispute/docview/1458637197/se-2?accountid=198529>
- Nwachukwu, C. C. (2020). CHAPTER THREE TRADITIONAL SHRINE: A PLACE FOR ALTERNATIVE DISPUTE RESOLUTION IN IGBO LAND. *AFRICAN INDIGENOUS KNOWLEDGE AND PEACE BUILDING*, 41.
- Okeke, A. (2021). *Exploring Alternative Dispute Resolution for Settlement of Criminal Disputes in Nigeria*. (28497332 Ph.D.), Walden University, Ann Arbor. Retrieved from <https://www.proquest.com/dissertations-theses/exploring-alternative-dispute-resolution/docview/2535807031/se-2?accountid=198529> ProQuest Central; ProQuest Dissertations & Theses A&I database.
- Olaoba, O. (2008). Yoruba legal culture. Lagos: New Age Publisher Limited. Oliver.
- Olufemi, O., & Imosemi, A. (2013). Alternative dispute resolution and the criminal judicial system: a possible synergy as salve to court congestion in the Nigerian legal system. *Arabian Journal of Business and Management Review (Nigerian Chapter)* Vol, 1(10).
- Omale, D. J. O. (2009). Restorative justice as an alternative dispute resolution model: opinions of victims of crime and criminal justice professionals in Nigeria.
- Schapera, I. (1977). Contempt of court in Tswana law. *Journal of African Law*, 21(2), 139-152.
- Ushi, V. I. (2015). *Restorative justice alternative to the traditional criminal justice system in Nigeria*. (3724948 Ph.D.), Capella University, Ann Arbor. Retrieved from <https://www.proquest.com/dissertations-theses/restorative-justice-alternative-traditional/docview/1732168390/se-2?accountid=198529> ProQuest Central; ProQuest Dissertations & Theses A&I database.
- Uwazie, E. E. (2011). *Alternative Dispute Resolution in Africa Preventing Conflict and Enhancing Stability*. Retrieved from <http://www.jstor.org/stable/resrep19066>