

# CUSTOMARY DISPUTE SETTLEMENT: A TOOL FOR ACHIEVING AGENDA 2063 ASPIRATIONS IN AFRICA.

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*“...we have yet to discover a culture which does not have some deep-seated restorative traditions. Nor is there a culture without retributive traditions. Perhaps it is in view of this understanding that more and more people in contemporary times are looking within their existing cultures and finding models and traditions that can be adopted or adapted to suit a culturally sensitive dispute resolution and reconciliation process. This international trend of looking ‘within’ or ‘inwards’ for dispute resolution, peace and reconciliation mechanisms, is a new and developing one which ought to be encouraged especially in Africa...”<sup>1</sup>*

## ABSTRACT

*Aspiration 4 of the African Union Agenda 2063 hopes to attain an Africa where guns are silent, mechanisms for peaceful resolution of conflicts at all levels are functional and a culture of peace, tolerance in Africa’s children and youth are nurtured, amongst others. There is no gainsaying that the primary institution for the attainment of this all important aspiration is the family. This paper therefore identifies the role of the family as the first institution of socialization and education; it goes back in history to trace an Africa where families and communities lived peacefully and resolved family and communal clashes using traditional dispute resolution techniques which were mostly restorative in nature. The paper argues that incohesion, restlessness and insecurity are brewed from adversarial litigation of our Courts in matters of communal and family clashes which should have been settled amicably by family or communal heads. To attain a peaceful and secure continent of Africa, the paper recommends the need to reinstate age long customary dispute resolution techniques and customary human rights laws in Africa.*

**KEYWORDS:** *Traditional dispute resolution, Family, Communal head, peace, Africa.*

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<sup>1</sup>Don John O. Omale,(2006): Justice In History: An Examination Of African Restorative Traditions’ and The emerging ‘Restorative Justice’ Paradigm, African Journal Of Criminology & Justice Studies: AJCJS 1554-3897 Vol 2, No. 2, p. 33.

## 1.0 INTRODUCTION

Once upon a time, in the rainforests, tropical deserts and savannah grassland of Africa, families bonded- people understood what brotherhood meant, customs were respected as principles that guided the community, reviewed only when the need arises and communities found ways to dialogue and settle disputes between themselves or with other communities.

In those times, parents taught their children values such as maintaining family ties and community networking. Every child grew up with the consciousness of being each other's keeper. There was peace, cohesion and security of lives and property.

However, colonialism came into Africa. The colonial masters, in a bid to make their governance less cumbersome, set aside traditional values and customs and introduced the process of going to Courts to resolve disputes. Western education also set in and gradually, people saw the old ways of securing peaceful co-existence through dialogue and reconciliation as "archaic". Thus, traditional Africa suffered contempt.

Presently, there is a call for peace and it is becoming more apparent that to achieve a peaceful Africa, there is need for a restoration of age long dispute resolution techniques. This paper lends her voice to the African call for peace, with a strong view that family and communal clashes need not be a matter in our Courts but should be properly assigned to traditional institutions. The paper submits that family and community heads are better experienced and knowledgeable in matters of their customs and people and so have better approach that will steer peace for all.

## 2.0 CONCEPTUAL/ THEORETICAL FRAMEWORK

### 2.1 *Conceptual framework*

#### **2.1.1 Family**

Family is considered a basic cell of the society.<sup>2</sup> All social and cultural practices find their connection with a notion of family, either supporting or distorting it.<sup>3</sup> The family is

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<sup>2</sup> Allan C. Carlson, The Family as the Fundamental Unit Of Society, the Howard Center , World family policy forum, 1999, 28; William Benette, Stronger Families, Stronger Societies, The New York Times, <https://www.nytimes.com/roomfordebate/2012/04/24/are-family-values-outdated/stronger-families-stronger-societies> accessed 15 June 2018. See also, Stephanie Pacheco , The communists are right: the family is the basic cell of the society. But here is why their solution is wrong, <<http://truthandcharityforum.org/the-communists-are-right-the-family-is-the-basic-cell-of-society-but-here-is-why-their-solution-is-wrong/>> accessed 15 June 2018.

a social group characterized by common residence, economic cooperation and reproduction.<sup>4</sup> It includes adults of both sexes, at least two of whom maintain a socially approved sexual relationship, and one or more children, own or adopted, of the sexually co-habiting adults.<sup>5</sup> Some other definitions of family has taken into consideration the changing times and have gone ahead to include many other variations such as gay partners, couples with dependents, single mums or dads with children, siblings living together, etc.<sup>6</sup> However, this paper aligns with the definition of family that reflects traditional African system, that is, a fusion of a man, a woman children and relatives as the case may be.<sup>7</sup>

### ***2.1.2 Socialization***

To live in a society, an individual requires specific methods and techniques to mold his/her social life to become a proper member of that society. So, it is the socialization process which molds a baby into a social person.<sup>8</sup> It is the process by which an individual learns various social norms to help him adapt to the society and is achieved through series of interaction with family, community or groups.<sup>9</sup> For the purpose of this paper, socialization means a continuous and life long process whereby an individual learns language, culture, values, norms, attitudes and behaviors which molds his/her personality in a society.<sup>10</sup> This process continues till the end of life.

## ***2.2 Theoretical Framework***

### ***2.2.1 Restorative Justice Theory***

Restorative justice is a theory that relies on reconciliation rather than punishment.<sup>11</sup> It is founded on the idea that a well-functioning society operates with a balance of rights and responsibilities. In any situation where there arises an imbalance, methods must be found to restore the balance, so that members of the community, the victim, and offender, can come to terms with the incident and carry on with their lives.<sup>12</sup>

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<sup>3</sup> MOJA Afryka, Concept of Family in Africa, <http://mojaafryka.weebly.com/concept-of-family.html> accessed on 15 June 2018.

<sup>4</sup> Murdock, George Peter (1949) Social Structure, New York: Macmillan company, 2<sup>nd</sup> Edition, 326

<sup>5</sup> Ibid.

<sup>6</sup> What is Family?

<http://www.abs.gov.au/ausstats/abs@.nsf/Products/6224.0.55.001~Jun%202011~Chapter~What%20is%20a%20Family%3F> accessed 15 June 2018.

<sup>7</sup> Relatives include grandparents, uncles, aunties, step brothers and sisters, cousins, etc. as is the case for extended family systems.

<sup>8</sup> What is Socialization - Meaning and Definition of Socialization,

<http://www.studylecturenotes.com/social-sciences/sociology/125-socialization> accessed 20 June 2018

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> What Is Restorative Justice? <https://www.westerncape.gov.za/general-publication/what-restorative-justice> accessed 14 June 2018.

<sup>12</sup> Ibid.

In most African communities, restorative justice is popular; elders encourage children to take responsibility for their actions, achieving outcomes such as apology, restitution and reparation, and restoring relationships between offenders and victims.<sup>13</sup> Where a community is involved, meetings are held publicly so as to involve everyone in the process.<sup>14</sup> Under Restorative justice theory, offenders most times are not separated from their support system of family and close relatives, and those closest to offenders hold them responsible.<sup>15</sup>

The argument against restorative justice is that restorative traditions or cultures are regarded as ‘timid’ and weak.<sup>16</sup> However, studies suggest that with restorative justice, offenders are less likely to reoffend.<sup>17</sup> A 2007 study also found that restorative justice had highest rate of victim satisfaction and offender accountability more than any method of justice.<sup>18</sup> The theory of restorative justice gives support to the argument in this paper that a culture of peace is an offshoot of a society that relies more on negotiation, restitution and compensation rather than punishment for offences committed in that society.

### ***2.2.2 New Legal Realism Theory***

This theory moves beyond the emphasis on judges, courts, and formal legal systems and examines law in people’s everyday lives, using interdisciplinary methods, including qualitative, quantitative, and experimental approaches.<sup>19</sup> It focuses on laypeople’s experiences with law as well as studying legal professionals and formal institutions.<sup>20</sup> This theory proposes that research methods are chosen according to evolving research questions, responding to changing understandings as knowledge accumulates. In this paper, New legal Realism theory supports the stand that as the times change and people are unable to resolve disputes in the adversarial system of our courts, the time is ripe to look inwards and evolve a system of dispute resolution that responds to the changing times.

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<sup>13</sup>Taslim O Elias, (1990)*Traditional forms of public participation*, University of Lagos Press, in Ibidapo-Obe, *Social discourse, a synthesis of African Law*, concept publications, p 95.

<sup>14</sup>Taslim O Elias (1954): *Nature of African Customary Law*, Manchester University Press, p 213.

<sup>15</sup>Taslim O Elias, *Traditional forms of public participation*, n 13, *ibid*.

<sup>16</sup>Braithwaite, J (2002) ‘The fall and Rise of Restorative Justice’. [www.oup.org](http://www.oup.org):

<sup>17</sup>This is because restorative justice provides a platform where victim and offender meet and where appropriate, the offender makes fair restitution to the victim, their families or dependents. Such restitution includes the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, etc. see the united Nations Declaration of Basic Principles of justice for victims of crime and abuse of power, (1985), section 8.

<sup>18</sup>Lawrence W Sherman and Heather Strang (2007): *Restorative justice: the evidence*, The Smith Institute Publishers, ISBN 1 905370 16 4, p 8.

<sup>19</sup>Frank B. Cross (2015) *The New Legal Realism and Statutory Interpretation*, *The Theory and Practice of Legislation*, 1:1, 129-148, DOI: [10.5235/2050-8840.1.1.129](https://doi.org/10.5235/2050-8840.1.1.129).

<sup>20</sup> *Ibid*.

### 2.2.3 *The Prudentialism theory*

This is a moral and precautionary principle that acts to avoid particular negative effect.<sup>21</sup> *Prudentialism* is a philosophy of constitutional interpretation that considers laws and powers from a pragmatic viewpoint.<sup>22</sup> Accordingly, the theory counsels judges and Lawyers to avoid setting broad rules for future cases and have an understanding of the limited role courts should play in a constitutional democracy.<sup>23</sup> This paper relies on the theory of *prudentialism* to support the argument that the courts should have less intervention with communal and family clashes or misunderstandings in order to foster peaceful reconciliation rather than the adversarial drama of Courts.

## 3.0 TRADITIONAL AFRICAN FAMILY/COMMUNAL SYSTEM

### 3.1 *The traditional family system*

The concept of the African traditional family is premised on expansive kinship network.<sup>24</sup> The family can either be the nuclear family in which case it is made up of the man, his wife and children or the extended family which includes grandparents, uncles, aunties and relatives in addition to the nuclear formation.<sup>25</sup>

To describe the family as a system in traditional African society, it is important to note that the most important institution that's leads to the formation of a family is marriage, which for the purpose of this paper, is the coming together of two consenting adults of opposite sex for the purpose of procreation, companionship, responsibility or fulfilment of purpose.<sup>26</sup>

In Africa, a marriage is never just an affair between two families because it usually involves the whole village or clan.<sup>27</sup> It is also an alliance between two families.<sup>28</sup> And in

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<sup>21</sup> Scott C. Idleman,(1995) A Prudential Theory of Judicial Candor, 73 Tex. L. Rev. 1307, Texas Law Review Association, p 1395-1398.

<sup>22</sup> John E. Finn (2006). "Civil Liberties and the Bill of Rights". The Teaching Company. Part I: Lecture 4: The Court and Constitutional Interpretation, 52- 54.

<sup>23</sup> Ibid.

<sup>24</sup>Chaka Chirozva, Chipso Plaxedes Mubaya and Billy Mukamuri, The Traditional African Family in the Age Of Globalization Literature Review Report for Centre for Rural Development a Barefoot Education for Afrika Trust (BEAT) partner < <http://www.beatafrica.org/htm/comm.pdf>> accessed 21 June 2018.

<sup>25</sup>Introduction to Africa - Family, Kinship, and Domestic Groupings, <http://www.everyculture.com/Africa-Middle-East/Introduction-to-Africa-Family-Kinship-and-Domestic-Groupings.html> accessed 15 June 2018.

<sup>26</sup> Murdock, G. P. (1949) Social Structure, New York: The Macmillan Co. in "The Traditional African Family in the Age Of Globalization", n. 24, Ibid.

<sup>27</sup> See generally, Marriage and the Family in Africa (1988): Position Papers, *Traditional African approaches in the light of natural values, and of modern secular attitude* < <http://www.cormacburke.or.ke/node/288>> accessed 21 June, 2018.

a certain sense whole villages or clans are involved. Thus, Africans have a saying that it is not two individuals but two clans that marry.<sup>29</sup> It goes without saying therefore that the institution of marriage leads to the formation of family.

Significantly, the family plays a very important role in Africa. As one writer posits, each person in African traditional life lives in or as a part of the family.<sup>30</sup> What this means is that everyone individual starts out life from a family. The family is therefore the first institution for socialization of any individual.<sup>31</sup> It is the family that teaches the individual norms and traditions, how to speak, who to speak with and when to speak with whom. Everything about an individual is molded first in the family. Writing on the role the family plays in the life of an individual, Kisembo observes that the family is a fundamental element of the African, the sphere from which he acts from and through which he becomes integrated with the larger, human community.<sup>32</sup>

The traditional African family comprises of parents, children, grandparents, uncles, aunts, brothers and sisters who may have their own children and other immediate relatives.<sup>33</sup> In the traditional society, polygamous marriages were always preferred because such marriages contributed to enlarging the family by incorporating more people.<sup>34</sup> The members of the extended family could live together in a traditional compound<sup>35</sup> consisting of several houses and would come together to take important decision that concern the family.<sup>36</sup>

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<sup>28</sup> Ibid.

<sup>29</sup>Aldous, J. (1965). "Urbanization, the Extended Family and Kinship Ties in West Africa" in P. Van den Berghe (Ed) *Africa: Social Problems of Change and Conflict*, San Francisco: Chandler Publishing Co.

<sup>30</sup>Mbiti, J. (1975), Introduction to African Religion, (2nd ed.), Nairobi: East African Educational Publishers, Ltd 175.

<sup>31</sup> What is Socialization - Meaning and Definition of Socialization, n. 8

<sup>32</sup>Kisembo B Magesa L and Shorter A (1998) African Christian Marriage, (2nd ed.). Nairobi: Paulines Publications, 202-203.

<sup>33</sup>Mbiti, J. (1969): African religions and philosophy, London: Heineman Educational Books, Ltd. 106.

<sup>34</sup>Waruta, D.W. (2005) "Marriage and family in contemporary African society: challenges in pastoral counseling" Nairobi: Acton Publishing, 105.

<sup>35</sup> Families were easily recognized because each compound had a name which were mostly the surnames borne by family members in the compound. Their surname was their tie and they did all to maintain and preserve the compound or family name. Each one knew the family that was peaceful, troublesome, strong, weak, criminally minded or even the family that produced traditional rulers. See generally, Shimkin, D and V. Uchendu, (1978): "Persistence, Borrowing and Adaptive Changes in Black Kinship Systems: Some Issues and their Significance", in E. M Shimkin D. A Frake (Eds) *The Extended Family in Black Societies*, The Hague: Mouton Publishing.

<sup>36</sup>Moja Afryka, Concept of Family in Africa, < <http://mojaafryka.weebly.com/concept-of-family.html> >accessed 8 June 2018.

The extended family provided an individual with a personal and corporal identity.<sup>37</sup> The cultural and moral norms of the community, which were applied within the extended family, helped an individual to grow into a productive and respected member of the community.<sup>38</sup> Those norms served as a blueprint for his life.<sup>39</sup>

The family was therefore the first religious community to which an individual belonged.<sup>40</sup> It was through grandparents, parents and other members of the family that one learned about religious and spiritual heritage.<sup>41</sup> It was most probably the first place where one heard about God, spirits, ancestors and afterlife.<sup>42</sup> In the family, the child was taught the importance of respect to elders, obeying and keeping to family traditions, keeping away from evil deeds, accepting other members of the family as sharing a bond which cannot be broken.<sup>43</sup> The traditional family also taught the individual the consequences of indulging in any evil or forbidden activity as well as the panache of upholding revered family names and ties.<sup>44</sup>

The family under consideration was as a means of mutual support and members of the family, whether nuclear or extended, supported each other psychologically and practically, e.g. in farming, rearing of children, supporting elder persons and the sick.<sup>45</sup> In case of any need, an individual could count on support within his extended family.<sup>46</sup> It was also a means of ensuring security, since usually a number of members of the extended family would live in the same compound or close to each other.<sup>47</sup>

Ultimately, the family is recognized as the most influential agent in the socialization of the individual.<sup>48</sup>

*“...because of its primacy in the experience of the individual, it has the best opportunity of any institution to make its pattern felt...the individual*

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<sup>37</sup>The Traditional African Family in the Age Of Globalization, n 24 *ibid*, p 45

<sup>38</sup> MOJA Afryka, Concept of Family in Africa, n 3, *ibid*.

<sup>39</sup> *Ibid*.

<sup>40</sup>Furaha Muzanssi, Ubuntu: A non-Western way of thinking about peace [https://www.researchgate.net/publication/290169160 Ubuntu A nonWestern way of thinking about peace](https://www.researchgate.net/publication/290169160_Ubuntu_A_nonWestern_way_of_thinking_about_peace) accessed 17 June, 2018.

<sup>41</sup> *Ibid*.

<sup>42</sup> *Ibid*.

<sup>43</sup> Being that blood relationship was strong and cannot be washed away. See Idowu, J, “Beyond Orthodox Stategies: Managing Conflicts and Sustaining Peace through Communal Ethics, Traditional Values and Methods in Africa” in *Studies in Sociology of Science*, (2006) Vol. 7 No. 4.

<sup>44</sup>*Ibid*.

<sup>45</sup>Aristotle is famously known to have posited that the family is nature’s established association for the supply of mankind’s everyday wants. See William Bennett, *Ibid*.

<sup>46</sup> *Ibid*.

<sup>47</sup>The Traditional African Family in the Age Of Globalization, n. 24, *Ibid*.

<sup>48</sup>Howard e. Freeman and Morris Showel, (1953): the role of family in the socialization process, the journal of social psychology, Vol. 37, 97.

*at infancy and early childhood is more sensitive to stimuli than he is later so that experiences register more deeply... ”<sup>49</sup>*

### 3.2 *The traditional communal system*

Traditional African view holds that a person is in existence because he is part of a community of people.<sup>50</sup> Thus, an individual existed in connection with a larger group, including his or her wider family.<sup>51</sup> He acquired his identity from that group and depended on that group for his physical and social survival.<sup>52</sup> In the African view, it is the community that defines a person as a person because personhood is something that had to be achieved and not given because one is human.<sup>53</sup>

As far as African societies are concerned, personhood is something at which individuals could achieve competence or ineffectiveness.<sup>54</sup> As such, emphasis was on the importance of the individual to learn the social rules by which the community lives, so that he becomes a person with all the inbuilt excellences implied by the term.<sup>55</sup>

Accordingly,

*“...in traditional life, the individual does not and cannot exist alone except corporately. He owes his existence to other people... The community must therefore make, create or produce the individual... Only in terms of other people does the individual become conscious of his own being, his own duties, his privileges and responsibilities towards himself and towards other people ”<sup>56</sup>*

An underlining similarity between the traditional family and communal systems is the bond in existence. The fact that whether in a family unit or a communal setting, there was shared brotherhood that allowed for peace and communalism.

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<sup>49</sup> Ibid. 98.

<sup>50</sup> The saying that “*umuntu ngumuntu ngabantu*” that is, “I am because we are, and since we are, therefore I am” is an age long saying in South Africa that depicts communal living in traditional African setting. See John Mbiti, *African Religions and Philosophies* (New York : Doubleday and Company, (1970), 141

<sup>51</sup> Ibid. 142

<sup>52</sup> Ibid.

<sup>53</sup> Ifeanyi A Menkiti, *Person and Community in African Traditional Thought*, 172, <<http://www2.southeastern.edu/Academics/Faculty/mrossano/gradseminar/evo%20of%20ritual/african%20tradditional%20thought.pdf>> 172 accessed June 2018

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Mbiti, J, *African religions and philosophy*, ibid. p 108

## 4.0 DISPUTE RESOLUTION: TRADITIONAL SYSTEM V THE COURT SYSTEM

### 4.1 *Traditional Dispute Resolution*

As earlier explained, traditional African society was made up of families who lived in individual compounds and got together to take decisions communally. Usually, conflict is inevitable in any society such as the one pictured. This sub head therefore, is a demonstration of how disputes are resolved in the Traditional society.

Traditional conflict resolution is the capability of social norms and customs to hold members of a group together by effectively setting and facilitating the terms of their relationship.<sup>57</sup> It is a healing process in which all stakeholders contribute positive energy.<sup>58</sup> The main aim of traditional dispute resolution is to re-establish the energy flow within individuals, families and communities so as to re-build social harmony.<sup>59</sup> Reconciliation often requires symbolic gestures, associated with rituals including exchange of gifts, and slaughter of animals like chickens, goats, cows, etc.<sup>60</sup>

Basically, conflict resolution deals with settlement of conflicts that may already exist. It is said that conflict resolution at the traditional level starts with restoring impaired relationship and making peace with God, the spirits, ancestors, family and neighbors<sup>61</sup> because this is critical in restoring other relationships at the physical level.<sup>62</sup>

Amongst the Igbo people of Nigeria, the basic unit of teaching peace and preventing conflict is the family.<sup>63</sup> The *Okpara* system, a system where the eldest male member of the family intervened over disputes, was widely used.<sup>64</sup> What the *Okpara* (first son) could not resolve moved to the *Umunna* or *Umuada* (council of free-born men or women) and

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<sup>57</sup>Fred-Mensah, Benk. (2005) “Nugormesese: An indigenous basis of social capital in a West African Community”. 1K Notes, No. 86, November. World Bank P 1.

<sup>58</sup> By stakeholders, it is meant the victim, the offender, and those who sit to mediate the complaint.

<sup>59</sup>Prince Kum'a Ndumbe III, The spiritual dimensions of resolution mechanisms in African countries. University of Oslo, Unit for comparative and International Education, Institute for Educational Research, 2001.

<sup>60</sup> Ibid.

<sup>61</sup>This is known as the spiritual dimension of conflict resolution. See, Kealotswe, O N “Acceptance and rejection: The Traditional – Healer Prophet and his Integration Of Healing Methods” accessed on <http://ubrisa.ub.bw/bitstream/handle/10311/352/Ikpe%20I.B-ACCEPTANCE%20AND%20REJECTION-THE%20TRADITIONAL-HEALER%20PROPHET%20AND%20HIS%20INTEGRATION%20OF%20HEALING%20METHODS.pdf?sequence=1> last checked on the 8<sup>th</sup> of June, 2018.

<sup>62</sup> Ibid, p 10.

<sup>63</sup>Charles Mezie-Okoye, “Tiv and Igbo Conflict Management Mechanisms: A Comparative Study” in International Research Journal of Social Science, 2016, Vol. 5(7) p 4.

<sup>64</sup> Ibid.

if necessary, to the *Amala* (the Council of elders).<sup>65</sup> In some other cases, elders from neighboring villages and even deities were brought to intervene.<sup>66</sup>

#### 4.1.2 *Traditional conflict resolution in practice*

Authors and writers in Africa have over the years, lent their voices to narrate the success associated with traditional conflict resolution.<sup>67</sup> In fact, traditional approaches to conflict resolution seem to be on high demand especially in Africa<sup>68</sup> so much so that it is referred to as customary arbitration<sup>69</sup> where traditional or communal rulers and their council chiefs constitute the customary arbitral panel.<sup>70</sup>

This arbitral panel has over the years, recorded successes in their approach to communal problems. For instance, in the Nigerian case of *Ehoche v Ijegwu*,<sup>71</sup> the Apa traditional council successfully arbitrated over a chieftaincy dispute.<sup>72</sup> Thus, the arbitral panel can make arbitral awards to the parties and it will be binding. The *bindingness* of customary arbitration has been affirmed by the West African Court of Appeal in *Omanhene Kobinna v Akese*<sup>73</sup> where the WACA held that

*where matters between parties are by mutual consent, investigated by a meeting held in accordance with native law and custom and a decision*

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<sup>65</sup> Ibid.

<sup>66</sup> Nwolise O B C, Ibid.

<sup>67</sup> Ofuho, Cirino Hiteng, Community Conflict Resolution and Reconciliation in the Kidepo, a paper delivered at the All-Africa Conference on African Principles of Conflict Resolution and Reconciliation, held on 8<sup>th</sup>-12<sup>th</sup> November 1999 in Addis Ababa, Ethiopia; Akinrinade, Sola, 1999: Warring ..but not unto death: Conflict Prevention and Resolution Mechanisms in Yoruba Military Tradition. Paper presented to the All-Africa Conference on African Principles of Conflict Resolution and Reconciliation. November 8<sup>th</sup> - 12<sup>th</sup> 1999 in Addis Ababa, Ethiopia; Brock-Utne, Birgit 1985: Educating for Peace. A Feminist Perspective. New York/ Oxford/Toronto/Sydney/Paris/ Frankfurt: Pergamum Press, p 175, Ezenwoko, F.A and Osagie, J.I (2014) "Conflict and Conflict Resolution in Pre-Colonial Igbo Society of Nigeria" in Journal of Studies in Social Science, Vol. 9 No.1.

<sup>68</sup> Ibid.

<sup>69</sup> The concept of customary arbitration was upheld in the case of *Okpuruwu v Okpakam* (1988) NWLR (pt 90) 554. George Oguntade JCA (as he then was), delivering a dissenting opinion on the lead judgement of Uwaifo JCA (as he then was), noted that there is such a thing known as customary or native arbitration. Accordingly, customary arbitration results where parties voluntarily submit their dispute to third parties as arbitrators and agree to be bound by the decision of such arbitration. However, a random intervention by a concerned common friend does not amount to customary arbitration and will not be upheld. See the Nigerian case of *Akaose v Ozurumba*, (1977) 1 NWLR, (pt 482).

<sup>70</sup> Akin Ibidapo-Obe and F Abayomi Williams, (2010): Arbitration in Lagos state A synoptic Guide, Concept publications, p 131.

<sup>71</sup> (2003) 7 NWLR (pt 818), 139

<sup>72</sup> Nigerian courts have also upheld customary arbitration techniques in the cases of *Monyenge & ors v Ebere & Ors*. (2004) 11 MJSC 184 and *Ume v Okonkwo* (1996) 2 SCNJ 414.

<sup>73</sup> (1932) 1 WACA, p 1 and 2.

*given, it is binding on parties and the supreme court will enforce such decisions.*<sup>74</sup>

It is therefore settled that customary arbitration or traditional dispute settlement techniques is a tool in many African societies.

To further buttress the point, let us give examples of traditional dispute settlement at work in Africa.

Amongst the people of Kidepo valley,<sup>75</sup> cattle is a highly regarded asset and each of these communities believe that all the cattle of the world belong to them by divine right.<sup>76</sup> Thus, the common source of conflict is cattle rustling.<sup>77</sup> The cattle owners and herders have over the years, acquired spears, arrows and even light weapons for the protection of their cows. Interestingly, these communities have often raided each other's cattle but still, have been able to resolve their disputes at the community level without much government and NGO involvement.<sup>78</sup> The technique for resolution of disputes in this community is to first identify the root causes of the problem, and then convene meetings between the two communities, headed by experienced opinion leaders and council of elders who have influential authority and wisdom.<sup>79</sup>

In northern Uganda, a writer has identified that among the Luo speaking tribe called the Acholi people, offenders accept responsibility for offences committed because the people of the community implore reconciliatory and co-operative methods that effectively encourage the accused to admit responsibility.<sup>80</sup> So, for several generations, the people have used reconciliation within the context of their tradition and their strong belief in leadership through consensus (everyone has a voice) to restore peace and maintain harmonious relations between families and clans.<sup>81</sup> The process involves the guilty acknowledging responsibility, repenting, asking for forgiveness, paying compensation, and being reconciled with the victim's family.<sup>82</sup>

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<sup>74</sup> Ibid.

<sup>75</sup>Of Eastern Equatoria. The valley starts from Karenga hills in the north-east border with Uganda and extends to south Sudan. See Birgit Brock-Utne, *Indigenous conflict Resolution in Africa*, A draft presented to the week-end seminar on indigenous solutions to conflicts held at the University of Oslo, Institute for Educational Research 23 – 24 of February 2001, p.1.

<sup>76</sup> Birgit Brock-Utne, *ibid*.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid. p. 2

<sup>79</sup> Ibid, p. 3

<sup>80</sup> Ibid.

<sup>81</sup> Lanek, Richard, 1999: Integrating Indigenous approaches with national and international mechanisms for conflict resolution and reconciliation. Paper presented to the All-Africa Conference on African Principles of Conflict Resolution and Reconciliation. November 8th - 12th 1999 in Addis Ababa, Ethiopia

<sup>82</sup>This is done through sharing the bitter drink – “*Mato Oput*”. This is what was meant earlier by “reconciliation within the context of their tradition”. The people of this community believe that the traditional drinking of the bitter herb of the *Oput tree* which by the way, has no medicinal value, depicts the

Meanwhile, the African Association for Literacy and Adult Education emphasizes that to attain their goals and objectives in the field of peace education, it is imperative to undertake in depth research into the African concepts of conflict, as well as the African methods, techniques and processes of conflict prevention, management and resolution.<sup>83</sup>

Remarkably, the restoration of clan elders who intervene to settle conflicts and mediate between warlords in Northern Somaliland, have helped to maintain order and stability in the land.<sup>84</sup> This system of traditional conflict resolution is today a reference point for the reorganization of the Somali society and conflict resolution and conflict management.<sup>85</sup>

Traditional Igbo and Tiv people of Nigeria are said to have used non-centralized forms of government such as the Elders and the Council of Elders for peacemaking and conflict resolution.<sup>86</sup> The people involve the process of *Igba-ndu*<sup>87</sup> to ensure that the parties to a dispute settle such disputes amicably without physical or spiritual attacks on each other.<sup>88</sup> *Igba-ndu* strengthens the unity that exists between the individuals, groups or communities and when administered, becomes the final process of peaceful resolution as parties concerned have involved the spiritual world to adjudicate on their behalf.<sup>89</sup>

Notably, traditional African dispute resolution is guided by the need to maintain peace in the resolution process because to do otherwise will be to provoke divinity and so the fear of sorcery or divine punishment is also used to show what the breach of peace would bring upon the society and the conflicting parties.<sup>90</sup>

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seriousness of the occasion and symbolizes that the psychological bitterness that prevailed in the minds of the parties in conflict situation have been covered by the *Mato Oput*. See Lanek Richard, *ibid*.

<sup>83</sup> African Association for Literacy and Adult Education (AALAE), *The Third Three-Year Programme 1995-97*. Nairobi, Kenya, December 1994.

<sup>84</sup> Nabudere Dani W, *The contribution of African traditional learning to mutual understanding*, a paper presented to the NASEDEC conference on "Learning in Intercultural Contexts", at SIDA conference Center at Sandö, Sweden, 30 Oct -2.Nov, 1997, p. 5

<sup>85</sup>*Ibid*. p 6

<sup>86</sup>Charles Mezie-Okafor, *Igbo Traditional Mechanisms of Conflict Resolution in Tiv and Igbo Traditional conflict mechanisms*, *Ibid*, p 9.

<sup>87</sup>The concept of *Igba-ndu* is tied to the knowledge of the existence of a supreme being or deities who are very powerful as to intervene in the affairs of men when they are invited and thus dispense justice to defaulters who break the covenant entered. For any *Igba-ndu* to be potent, it has to be tied to a deity or god. Prominent deities such as *Igwekaala*, *Amadioha*, *Ibinokpabi*, *Ahajioku* etc. are some of the deities called upon to witness such covenants. See Nwolise, O B C, "Traditional Approaches to Conflict Resolution Among the Igbo People of Nigeria: Reinforcing the Need for Africa to Rediscover its Roots". (2004) *AMANI Journal of African Peace*, Vol 1, No 1, p 4

<sup>88</sup>Nwolise OBC, *Ibid*.

<sup>89</sup>*Ibid*. see also, Aloysius Duru, "Igba Ndu in Igbo land" in Ohuzo –Igbo ideals and Socio- Political Thought, (2009) <http://ohuzo.Blogopot.com.ng/2009/03/igba-ndu-in-igboland.htm>. Accessed 16 June 2018.

<sup>90</sup> Charles Mezie-Okafor, *Igbo Traditional Mechanisms of Conflict Resolution in Tiv and Igbo Traditional conflict mechanisms*, n 63 *Ibid*, p 10.

In Liberia, among the Kpelle people, conflicting parties are brought to the local meetings called *moots* and with the help of experienced elders, they arrive at mediated settlements.<sup>91</sup>

In Tanzania, special methods are employed by mediators to ensure that conflicting parties resolve their conflicts peacefully.<sup>92</sup> Methods such as singing, talking, shaming, ridiculing, etc. are used in contexts where they are acceptable in an effort to change the behavior of trouble-makers.<sup>93</sup>

Ultimately, elders are respected and trusted as worthy mediators all over Africa. This is as a result of their accumulated experience and wisdom. The interesting thing about African traditional dispute resolution is that there is no pre-determined model as the focus is to attain peace and so, in the mediation process, the elders are flexible to accommodate the feelings of parties.<sup>94</sup>

Accordingly,

*“...the elders see their traditional objectives in conflict resolution as moving away from accusations and counter-accusations, to soothe hurt feelings and to reach a compromise that may help to improve future relationships...”*<sup>95</sup>

In this traditional society being discussed, women’s roles as peace agents and their cultural and socio-political roles and contributions to the overall well-being of these societies were evident.<sup>96</sup>

#### 4.1.3 What changed?

The relegation of traditional dispute resolution techniques was largely due to the following reasons:

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<sup>91</sup>Bob-Manuel, Ineba, 2000: A cultural approach to conflict transformation: an African traditional experience. *Term Paper*. Written for the course: “Culture of Peace and Education” taught at the European Peace University Stadtschlaining, Austria. Fall Semester 2000.

<sup>92</sup>Bob-Manuel Ineba, A cultural approach to conflict transformation: an African traditional experience, Ibid..

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup>Isike, Christopher and Uzodike, O. Ufo. Towards an indigenous model of conflict resolution: Reinventing women’s role as traditional peace-builders in neo-colonial Africa

- *Colonial intervention*

The arrival of the colonial masters in Africa led to the beginning of the end of traditional dispute resolution techniques; indigenous or local ways of approaching peace processes during conflict were perceived in terms of how they fell short and what they lacked<sup>97</sup> and not so much on the rich insights it had to offer.<sup>98</sup> This illustrates why the colonialists were unable to identify and appreciate non-European institutions or approaches.<sup>99</sup> What they did was to set aside the traditional methods and impose their ideas and ideologies on those they governed.<sup>100</sup>

- *Western education/globalization*

Aside colonialism, western education is a contributory factor to the neglect of traditional dispute resolution techniques. Western education teaches the Court system, a system where even family and communal issues are brought forward to the public view.<sup>101</sup> There is no emphasis on peace education as contemplated by the Agenda 2063<sup>102</sup> and so, neither peace nor tolerance is nurtured, especially amongst the youth.<sup>103</sup> The result of this is that there is a ripple effect of the impact of western education and a disbanding of the chord of peace and tolerance that held us together as Africans.

Apparently, the elites in our societies who are influenced by western education, have dismissed traditional approaches as being ‘backward’ and ‘not relevant’.<sup>104</sup> Thus, in some African countries, the practice of customary resolution of disputes have been completely ostracized while in some others, they are regarded as legitimate but are hardly in use.<sup>105</sup>

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<sup>97</sup>Pierre Clastres, (2007): *Society against the state: essays in political anthropology*, New York : Zone Books.

<sup>98</sup>Furaha Mussanzi, *Ubuntu: A non-Western way of thinking about peace*, n. 40 *ibid*.

<sup>99</sup>Brigg M and Bleiker R (2011) *Post-Colonial Conflict Resolution: Mediating Across Difference: Oceanic and Asian Approaches to Conflict Resolution*, Honolulu: University of Hawaii Press, p.19

<sup>100</sup>Shizha, Edward (2013) *Reclaiming Our Indigenous Voices: The Problem with Post-Colonial Sub-Saharan African School Curriculum: Journal of Indigenous Social Development*, Vol 2, Issue 1

<sup>101</sup>Taslim O Elias, *the nature of African customary Law*, n *Ibid*, p 214.

<sup>102</sup>Agenda 2063, *Aspiration 4(32)* < <http://www.un.org/en/africa/osaa/pdf/au/agenda2063.pdf>> accessed 20<sup>th</sup> June, 2018.

<sup>103</sup> *Ibid*.

<sup>104</sup> *Ibid*.

<sup>105</sup>Brigg M and Bleiker R, *Post-Colonial Conflict Resolution: Mediating Across Difference: Oceanic and Asian Approaches to Conflict Resolution*, n. 99 *ibid*.

Ridiculously, many leading members of the African Union still conform to the western peace-making template.<sup>106</sup> As a writer observes, many African leaders today are western educated hence it could be argued that they have embraced the western worldview on peace.<sup>107</sup> The implication of this is that Africans have slowly but steadily shifted away from their indigenous ways, that is, the peace mechanism that worked and should have still worked for them, to embrace a culture (though global) that seems to have tampered with our peaceful dispute resolution techniques. This accounts to why some writers are of the strong opinion that perhaps, globalization is part of the reason Africans have neglected their traditional dispute resolution methods.<sup>108</sup>

#### 4.2 *The Court system*

The courts are products of Western civilization or education. As one writer puts it,

*Western legal approach emphasizes establishing guilt and executing retribution and punishment without reference to the victim or the wider families or future reincorporation of the offender into the community. Physical and material penalties and use of force, including costly prisons, provide the sanctions against 4 offending. Western legal approaches are adversarial and evidence must be direct and specific. The process effectively encourages the accused to deny responsibility...*<sup>109</sup>

The above contrasts the traditional method where the elders function as a court with broad and flexible powers to interpret evidence, impose judgements, and manage the process of reconciliation.<sup>110</sup> The courts operate a system that was basically a contest between the state and the offender.<sup>111</sup>

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<sup>106</sup>Financial Times, 'A Man in a Hurry: Thabo Mbeki Pushes for Jobs at Home and Peace Abroad', 22 February, 2005.

<sup>107</sup>Mac Ginty, Roger (2008) Indigenous Peace-Making versus the Liberal Peace: Cooperation and conflict.

<sup>108</sup>Brigg M and Bleiker R, *ibid*.

<sup>109</sup>Lanek, Richard, 1999: Integrating Indigenous approaches with national and international mechanisms for conflict resolution and reconciliation. Paper presented to the All-Africa Conference on African Principles of Conflict Resolution and Reconciliation. November 8th - 12th 1999 in Addis Ababa, Ethiopia

<sup>110</sup>Ruto Pkalya, Mohamud Adan, Isabella Masinde, indigenous Democracy: Traditional conflict resolution mechanisms, Betty Rabar, and Martin Karimi (eds), A publication of ITDG-EA publication, 2004, p 44 East Africa: Intermediate Technology development Group

<sup>111</sup>Akin-Ibidapo-Obe and F Abayomi Williams, Arbitration in Lagos state A synoptic guide, n 70 *ibid*, p 100.

## 5.0 CONCLUSION AND RECOMMENDATIONS

### 5.1 Conclusion

This paper has expounded on customary or traditional dispute mechanisms in Africa. It gave the peaceful nature of customary dispute resolutions that made for reconciliation rather than adversarial approach of our courts. It presented customary arbitration or dispute resolution technique as more attractive being that it promotes reconciliation and restores peaceful relationships within the community and advocates for a revisit of our age long traditional ways of dialogue and reconciliation in dispute resolutions. This paper submits that traditional dispute resolution is the best mechanism that will guarantee peaceful prevention and resolution of conflicts at the grass root level.

### 5.2 Recommendations

For a restoration of an Africa where guns are silent and peaceful co-existence is valued, there is need for a re orientation of African families and family members. The awareness is on-going but should further be drummed up so that Africans understand that being a member of a family makes you a part of the whole community. Family members should be taught to eschew unnecessary rivalry and embrace peace talks when faced with disagreements.

This paper calls for a balance between traditional dispute mechanism and modern methods, that is, the courts. Matters relating to communal clashes and family disagreements should be taken off from our courts entirely. The courts should concentrate on commercial and criminal matters. The discussion above is a clear indication that traditional dispute resolution techniques are suitable for certain disputes including family and communal problems. The traditional chiefs and community heads should be allowed to evolve pro-active methods of approaching communal clashes either at the community level or between communities.

In most African countries and communities, traditional institutions are adequately remunerated under the umbrella of the Ministry of Local Governments and Chieftaincy Affairs. What this means is that these traditional institutions are paid by government to be in existence. This paper therefore calls for maximum utilization of traditional heads and community leaders. Since traditional heads are highly revered by their people, it is easier for governments to ‘use’ them to ‘talk’ to their people in times of conflict or clashes. That way, their impact is felt more by both government and the people.

There is need to introduce peace education into the school curriculum in Africa. This curriculum will tell the African story, expose children to practical lessons on reconciliation and advocate for peace and the benefits of brotherhood in Africa.

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, calls for a periodic review of existing legislation and practices in order to ensure responsiveness to changing circumstances, and to enact and enforce legislation proscribing acts that violate internationally recognized norms relating to human rights, corporate conduct, and other abuses of power.<sup>112</sup> Therefore it is a chore that the African society adapt her laws and practice of laws to reflect the changing times. The Herdsmen and farmers clashes in Nigeria, the South African xenophobic attacks and the rifts between communities in Sudan, Zimbabwe, Sierra Leone and the rest African countries in conflict, can simply be as a result of deficiency in dialogue and reconciliations. Thus, legislations should steer towards advocacy for traditional dispute settlements.

Finally, this paper restates (with strong belief that it can never be over emphasized) that if Africa has to put the 'falling apart together', her original values must be revisited.<sup>113</sup>

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<sup>112</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, section 4 (c) , A/RES/40/34 29 November 1985, 96th plenary meeting.

<sup>113</sup> Bob-Manuel, Ineba, 2000: A cultural approach to conflict transformation: an African traditional experience. Term Paper. Written for the course: "Culture of Peace and Education" taught at the European Peace University Stadtschlaining Austria. Fall Semester 2000.