

**Principles, Effectiveness and Challenges of Traditional Dispute Resolution Mechanisms:
A Review of Cases from Kenya, Rwanda, Sudan and Uganda**

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Abstract

Conflict is inevitable and so is an increased quest for peaceful coexistence in modern societies. Therefore, the process and effectiveness of applied resolution mechanism are what matters. Formal legal systems of conflict resolution in African countries are post-colonial western institutions used to seek justice. However, entwined within the cultures of most communities are traditional dispute resolution mechanisms (TDRM). Although used, these TDRMs remain unrecognized. This paper critically analyzes broad literature on four such mechanisms as practiced by various communities in East Africa. The selected mechanisms include *mato oput*, a traditional justice system of the Acholi tribe in Uganda; *abunzi* mediation, a Rwandan approach to local justice; *judiyya*, a grassroots system of arbitration that focuses on reconciliation and the restoration of social relationships in Darfur community in Sudan; and *taboo system*, a source of peace for Isukhas of Kakamega in Kenya. The paper explores the general principles used in traditional dispute resolution mechanisms, their effectiveness in enhancing human relationships, and implementation challenges with the establishment of formal legal systems and the complexity of disputes encountered. Process of change is identified. The methodology is critical analysis of secondary sources and data. Four common principles, known as the *4Rs*, emerge from this analysis: respect and sincerity; reconciliation and forgiveness; restitution and atonement; and restoration of peace. The effectiveness of the selected TDRMs is seen in four areas: fostering justice; truth and compensation; enhancing human relationships; forgiveness and reconciliation; and restoration of peace and harmony. Synthesis of the literature reveals that most *African countries still hold onto customary laws under which application of traditional dispute resolution mechanisms is common*. The paper argues that although it is important to solve conflict using international, national and state institutions, we must underscore the role of traditional dispute resolution mechanisms for certain conflicts or parts of it, especially interpersonal and intergroup disputes. These expeditiously implemented mechanisms of resolving conflict are effective, enhance human relationships and peaceful coexistence, and focus on the needs and interests of parties involved and the community as a whole.

Keywords: conflict resolution, dispute resolution, mediation, peacebuilding, peaceful coexistence, reconciliation, traditional mechanisms

Introduction

Conflict is a natural phenomenon in the life of human beings which occurs in relation to interaction for socio-cultural, economic and political purposes. It exists when parties acknowledge the existence of incompatible goals, scarce resources, and interference from others in achieving their objectives (Burton, 1990). Traditional African societies are closely attached to deep-rooted cultural facts and elders play a major role in solving problems, creating strategies and shaping local visions based on skills and wisdom (Tafese, 2016). In order to do this, they use their past experience and knowledge cultivated from the local community and transmitted from generation to generation to develop, plan, and solve social problems (Tafese, 2016). According to Macfarlane (2007), indigenous knowledge is run by elders who are well known and respected members of the community and may comprise religious leaders, wise-men and other community leaders. Fiseha et al. (2011) similarly assert that prominent and old-age groups within a society are the source of indigenous knowledge as they have experience and critical perception about their environment. According to Mutisi (2012), while traditional institutions are rooted in the culture and history of African societies, the modern state exerts a large amount of influence on these institutions. In some cases, the traditional institutions are politicized and have become instruments of propagating state ideology. In other cases, especially where they express dissent with the state, these traditional institutions have often been undermined or usurped by the state (Mutisi, 2012).

Despite such state interference, almost every ethnic group has various traditional justice practices with fundamental features such as cleansing, truth telling, punishment or atonement through the requirement of compensation, forgiveness, and reconciliation (Baguna, 2012; Mutisi, 2011; Tom, 2006). More important, though, is that traditional conflict resolution processes in Africa are part of a well-structured, time-proven social system geared toward reconciliation, maintenance and improvement of social relationships (Tafese, 2016). These underlying themes in *Mato oput*, a traditional justice system of the Acholi tribe in Uganda (Wasonga, 2009), *abunzi* mediation, a Rwandan approach to local justice, *judiyya*, a grassroots system of arbitration that focuses on reconciliation and the restoration of social relationships in Darfur community in Sudan, and *taboo system*, a source of peace for Isukhas of Kakamega in Kenya, will be discussed.

Although peace does not necessarily mean the absence of violence, the selected TDRMs include one or more of the following themes: healing, reconciliation, and social justice. Similarly, Ajayi and Buhari (2014) note that conflict resolution in traditional African societies provides an opportunity to interact with the parties concerned. It promotes consensus-building, social bridge reconstruction, and enactment of order in the society. Traditional approaches to conflict transformation have not been adequately addressed by scholarly research and political practice. For the most part they are widely ignored, although empirical evidence from relatively successful cases of conflict transformation demonstrates their practical relevance (Boege, 2006). Principles, effectiveness, and challenges of TDRMs will be discussed.

Terminologies and Conceptual Framework

For the purpose of this paper, traditional institutions of conflict resolution are defined as those that have been practiced for an extended period and have evolved within African societies, rather than being

the product of external importation (Zartman, 2000). In essence, these institutions are rooted in the culture and history of societies, and are ingrained in the socio-political and economic environment of particular communities. They are usually built around the concepts of mediation, compensation, restitution and restoration (Mutisi, 2011). Ethnic group is defined as a section of the population, which by virtue of sharing a common cultural characteristic they are separated from others within that population (Onwuejeogwu, 2000). Nnoli (1978) describes ethnicity as a social phenomenon associated with interactions among members of different ethnic groups. Ethnic groups are social formations distinguished by the communal character of their boundaries whose relevant communal factor may be language, culture, or both (Nnoli, 1978).

A principle is defined as a fundamental truth or proposition that serves as the foundation for a system of belief or behavior or for a chain of reasoning (Def. 1, n.d.). It is a rule or code of conduct (Def. 2, n.d.) that is used as a guide to evaluate behavior. There are four principles, some or all of which are manifested in each of the identified traditional dispute resolution mechanisms (TDRMs).

Manifestation of the Four Principles

The principle of respect and sincerity

Mato Oput is an Acholi traditional peace and justice mechanism implemented as a local peace initiative involving perpetrators' confession and victims' decision to undertake the process led by elders. The process starts only after the perpetrator comes forward and confesses. Then the victim's family decides to inform the elders who will initiate the process. A "long process of confession, mediation and payment of compensation (*culo kwor*) to reconcile the clans" (Tom, 2006) initiated and conducted by the elders precedes the actual *mato oput* ritual. Investigation by respected elders is done to determine sincerity of the perpetrator.

Similarly, in Sudan, a community-based customary mediation known as *Judiyya* is preferred to the court system because, "customary mediation provides a more attractive, less costly and restorative resolution of the dispute" (Ogbaharya, 2010, p. 14). *Ajaweed*, the mediators, (Aljoodie-singular), are called upon to intervene in the conflict and they are versed in the communal customs and traditions (Wahab, 2018). Baguna (2012) contends that traditional justice, based on restorative principles, is widely supported as a favorable alternative to the punitive approach of the Court.

The principle of reconciliation and forgiveness

According to Wasonga (2009), the nature and practice of *mato oput* as an instrument for conflict resolution and reconciliation among the traditional Acholi is based on the Acholis' understanding of conflict as a life-threatening phenomenon. *Mato oput* is not a one-day event. It could last even five years as mediations and negotiations take place. *Mato oput* involves confession, a show of remorse, forgiveness, and compensation that leads to reconciliation and healing after a killing. This ritual has an important component used for fostering justice, truth, and compensation in Acholi land. Forgiveness and reconciliation are said to be at the center of the traditional Acholi culture (Tom, 2006). Forgiveness, therefore, reflects the non-violent community that is illustrated by the rule of hospitality over any criminal intentions (Niwano Peace Foundation, 2004).

The aspect of peaceful communal coexistence among the Isukha of western Kenya is a common

factor in African communities where people share resources with and take care of each other as brothers and sisters. The elders ensure that the *taboo* system acts as a control on all conflicts and tension, which if not resolved can cause disequilibrium. Living peacefully as a community is critical. Therefore, peaceful coexistence is enhanced through the enforcement of taboos with the purpose of healing and reconciliation.

The principle of restitution and atonement

Mato oput is not a one-day event. It could last even five years as mediations and negotiations take place. *Mato oput* involves confession, a show of remorse, forgiveness, and compensation that leads to reconciliation and healing after a killing. Through compensation, restitution and atonement are achieved.

Ogbaharya (2010) posits that mediated settlements are mandatory and failure to comply with them is seen as a culturally unacceptable behavior and is subject to tremendous social and communal sanctions in Sudan. In his research, Wahab (2018) reiterates that the *juddiya* model's emphasis on restitution and compensation for harm, to revise damaged relationships, ensures the full integration of parties into their tribal community and resumption of collaboration for the well-being of the group.

The principle of restoration of peace

This principle is manifested in many TDRMs. The *abunzi* mediation is part of the Rwandan justice system, whose restorative approach helps people to address their conflicts without resorting to litigation and other retributive approaches (Mutisi, 2011). By its locality, family, friends and community members are free to attend an *abunzi* mediation and their presence symbolizes belonging and community, enhancing peaceful coexistence.

Tom (2016) further asserts that the traditional Acholi culture views justice as a means of restoring social relations, hence justice should be considered as restorative. Baguna (2012) contends that traditional justice, based on restorative principles, is widely supported as a favorable alternative to the punitive approach of the Court. Therefore, it increases restoration of peace. For centuries, *judiyya* as a model has been maintaining harmony among Darfuris' ethnic tribal communities, repairing a complex web of relationships, and providing justice for the indigenous people according to accepted local customs and norms (Wahab, 2018).

Isukha *taboos* have for a long time been purposefully used to prevent misuse and instead enhance conservation of natural resources. Kakamega Forest has "more than 300 species of birds, 32 species of snakes, 7 species of primates, and 400 species of butterflies on less than 22,000 hectares of land" (Kilonzo et al, 2009, p. 41). A variety of taboos (*Table 1 and Table 2*) protect plants, animals, snakes, sacred sites, and birds as their abuse or misuse will lead to conflict in the community (Kilonzo et al, 2009). Conservation or protection of certain birds including "storks, cranes, and francolin help the community predict the approach of planting seasons, whereas kingfishers protect homesteads from evil" (Kilonzo et al, 2009, p. 57). Hence, abiding by the taboos and conservation of these resources ensures peace.

Taboos to conserve flora in Kakamega forest -Table 1

Isukha Plant Name	Scientific Name	Taboo	Belief
<i>Mukumu</i>	<i>Ficus thoningi</i>	Not to be cut	Hail stones will fall, or lightning will strike
<i>Likhono</i>	<i>Chaetame aristat</i>	Not to be cut	The victim's body will develop a rough skin
<i>Mutsulio</i>	<i>Spadodea canopanulala</i>	Not to be cut	The victim's skin roughens
<i>Omuseno</i>	<i>Ficus exasperate</i>	Not to be used as firewood	The smoke will lead to blindness
<i>Isambakhalu</i>	<i>Boehmeria marc</i>	Women are not allowed to cut it	Will lead to miscarriage during pregnancy
<i>Murembe</i>	<i>Erithrina abyssinica</i>	Not to be cut	Evil spirits will punish the perpetrator
<i>Murave</i>	<i>Kigelia moosa</i>	Not to be cut	The Perpetrator's body will swell
<i>Mulundu</i>	<i>Antaris toxicana</i>	Not to be cut	Demons will attack the reaper
<i>Musire</i>	<i>Crotons megalocapu</i>	Not to be used as firewood	The smoke will cause blindness
<i>Mutere</i>	<i>Maesopsi eminii</i>	Not to be cut	Will lead to the extinction of other trees
<i>Kukomosi</i>	<i>Maytenas hete</i>	Not to be cut	Men and women in the family of the perpetrator will become infertile
<i>Omutoto</i>	<i>Ficus aribela</i>	Not to be cut	Will lead to a curse from the ancestors
<i>Lusiola</i>	<i>Markhamia lulea</i>	Not to be cut	Ancestors will be annoyed
<i>Mukhomoli</i>	<i>Markhamia playtali</i>	Not to be cut	Evil spirits will attack the reaper

Source: (Omare, 2006)

Taboos that protect birds -Table 2

Bird's Name	Isukha Equivalent	Taboo	Belief
Owl	<i>Likhule</i>	Not to be killed	Evil spirits will take revenge through the death of the killer
Night jar	<i>Lihududu</i>	Not to be killed	Evil birds kept by the witches will bewitch the killer

Wag tail	<i>Vijonjionjio</i>	Not to be killed	The killer's house will catch fire
Ibis	<i>Shinamaha</i>	Not to be killed	Will lead to bad luck
Doves	<i>Liluma</i>	Not to be killed	Will cause a decrease in harvest
Cuckoo	<i>Tsinamandu</i>	Not to be killed	Death will come to the clan
Pied crows	<i>Likhokho</i>	Not to be killed	The killer's life will be shortened
Sun birds	<i>Mitsuni</i>	Not to be killed	Demons will attack the killer
Swifts	<i>Tsiminji</i>	Not to be killed	Drought will strike
Grey backed fiscal	<i>Inamande</i>	Not to be killed	All chickens will die
Hammer kop	<i>Shishindavoli</i>	Not to be killed	Will bring others to help revenge
Fly catcher	<i>Liroleli</i>	Not to be killed	The killer will get a bad disease

Sources: (Omare, 2006; Zimmerman et al., 2001)

Effectiveness and Process of Change

Mato Oput is both a process and a ritual ceremony that aims at 'restoring relationships' between the clans that would have been affected by either an intentional murder or accidental killing (Tom, 2006). A major function of the traditional chiefs is to act as arbitrators and reconcilers when disputes occur in order to 'restore peace' and 'maintain harmonious relations' between families and clans (Brock-Utne, 2001). *Taboos* are perceived to contain within them certain assumed dangers with repercussions for anyone who transgresses them. They exist to ensure that the moral structure of the universe 'remains undisturbed' for the good of humanity (Parrinder, 1969). During *abunzi* sessions and meetings, there is often a great deal of evocation of the notion of 'oneness' or the concept of *abanyarwanda* (Rwandan-ness), as opposed to being Hutu, Tutsi or Twa (Mutisi, 2011).

Although the process of change differs for each TDRM, the common factor in all of them is the elders, priests, or religious leaders who are leading mediation and negotiation for conflicting parties. In *Mato oput*, the willingness of the offender's clan (not the offender as a single person) to assume responsibility for the act committed, as well as readiness and ability to 'pay compensation' are necessary precursors for a successful process leading to the ceremony. Until the ceremony is concluded, *cen* would be expected to 'haunt the killer and his/her entire clan', a strong motivation to the successful conclusion of the ceremony.

Based on their integrity, *abunzi* mediators are chosen to handle local civil and criminal cases with the mediation committees undeniably rooted in traditional conflict resolution practices. Success of the *isukha taboos* is associated with their passing on of this knowledge from one generation to generation. Basic beliefs and values of the Isukha community, attributed to religion, are taught from childhood to adulthood. Kilonzo et al. (2009) ascertain that the ideological knowledge acquired is transformed almost automatically into belief because the adults act within a complex of social structures that conform to these beliefs, thereby reinforcing them among the youths. Community members understand that the 'violation' of any taboo is 'punishable' by God (Nyasaye/Were) or evil spirit.

These consequences for violators of traditional customs and principles such as being 'haunted' or 'punished' by evil spirit, as well as the aims or purposes of each TDRM such as restoring relationships,

restoring peace, and paying compensation, among others, enhance their effectiveness. Despite the challenges (See Table 3) of TDRMs, their effectiveness traverses the following four areas:

1. Fostering justice, truth, and compensation (*abunzi, mato opu, juddiya*)
2. Enhancing human relationships (*abunzi, mato oput, juddiyya, isukha taboo*)
3. Forgiveness and reconciliation (*abunzi, mato oput, juddiyya, isukha taboo*)
4. Restoration of peace and harmony (*abunzi, mato oput, juddiyya, isukha taboo*)

Challenges of Traditional Dispute Resolution Mechanisms

Traditional Dispute Resolution Mechanism (By Country)	Challenges
<i>Abunzi</i> (Rwanda)	<p><i>The politicization of the abunzi institution</i></p> <ul style="list-style-type: none"> • State involvement in determining jurisdiction, mandate, and conduct <p><i>Elements of obligation and coercion (voluntary yet mandatory control)</i></p> <ul style="list-style-type: none"> • The combined adversarial and conciliatory process makes it complex <p><i>Application is limited to specific conditions</i></p> <ul style="list-style-type: none"> • Not equipped to handle every violent conflict such as sexual violence, and so on
<i>Isukha Taboos</i> (Kenya)	<p><i>Increasing population in the district</i></p> <ul style="list-style-type: none"> • Puts pressure on land and available resources for survival <p><i>Secularization, modernization, urbanization, and globalization</i></p> <ul style="list-style-type: none"> • Increased individualism that impacts communalism • Globalization has negatively impacted the contribution of an indigenous belief system to natural resource conservation and peacebuilding <p><i>Formal education and foreign religiosities</i></p> <p><i>Government sanctions and political interference</i></p> <ul style="list-style-type: none"> • Locals prevented from involvement with the conservation of environmental resources • Government rules about forests keep changing and contrasting <i>Isukha's</i> religious and taboo system • Political instability affects biodiversity

Mato Oput (Uganda)	<p><i>Formalization does not guarantee legitimacy</i></p> <ul style="list-style-type: none"> • State control compromises its positive attributes <p><i>Nature and magnitude of crimes</i></p> <ul style="list-style-type: none"> • Small scale homicides versus mass atrocities including those that go beyond borders <p><i>Lack of competence in dealing with child soldiers, sexual slavery and abductions</i></p> <p><i>The legitimacy of process and lack of trust in elders presiding over the process whose appointments are based on political affiliations</i></p>
Judiyya (Sudan)	<p><i>Politicization by post-independence nationalists and socialists</i></p> <ul style="list-style-type: none"> • Tribal communities pressured to eliminate <i>judiyya</i> and use the national system instead • Efforts to enlist tribal and religious leaders into political parties

Table 3: Challenges of Abunzi, Isukha Taboos, Mato-Oput and Judiyya

Conclusion

Most African countries still hold onto customary laws under which application of traditional dispute resolution mechanisms is common. Local models have their roots in the continent's diverse cultures and belief systems; hence, tapping into the potential they offer in present situations could help to expand the success and legitimacy of conflict transformation endeavors in Africa at large (Wahab, 2018). The principles upon which the elders rely to resolve conflicts include respect and sincerity; reconciliation and forgiveness; restitution and atonement; and restoration of peace. Although limited to resolving specific local, community, family, and individual conflicts, effectiveness of TDRMs is evident in (i) fostering justice, truth, and compensation, (ii) enhancing human relationships, (iii) forgiveness and reconciliation, and (iv) restoration of peace and harmony.

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