

# **TOWARDS COMPLEMENTARITY IN AFRICAN CONFLICT MANAGEMENT MECHANISMS**

**BY**

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## **INTRODUCTION**

The history of conflict is as old as human history. From the dawn of human history, communities have been competing for control of resources and for dominance. These competitions inevitably led individuals as well as social, political, economic and religious groups to conflicts. It is true that conflict has devastating effects and it is unwanted. It is also true that conflict is unavoidable and it continues to occur.

Since the causes of conflict are different, it would be better to use different mechanisms for the prevention and resolution of conflicts. By avoiding conflict, we avoid not only one of the hindrances of economic development but also foreign powers' intervention, which may exacerbate the domestic conflicts. Therefore, more than anybody else governments, whose main duty is maintenance of peace and security, are responsible for providing their respective peoples with alternative conflict prevention and resolution mechanisms, popular and widely used among these are the African Traditional mechanisms.

Contemporary Africa is faced with the reality of numerous evolving states that have to grapple with the inevitability of conflict. On their own, the fledgling institutions in these states cannot cope with the huge demands unleashed by everyday conflict. It is within this context that the complementarity between African traditional institutions for conflict management and the modern state structures becomes not only observable but also imperative.

The continuing role and influence of traditional leadership in modern African is hard to miss. Nonetheless, the relationship between the state and traditional institutions should

not be taken for granted for it is a contested terrain fraught with complexities. 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.

However, the uniqueness of traditional institutions, by virtue of their endogeneity and use of local actors, cumulatively enables them to either resist or even sometimes subvert the state. These traditional institutions, also known as endogenous conflict resolution systems continue to demonstrate their relevance in post-conflict states. This is especially true in the context of weak states that are overwhelmed with ongoing state-building processes. There is no clear-cut formula regarding the interactions between the state and traditional institutions. A relationship definitely exists between the two and understanding this could be central in the promotion of sustainable peace in post-conflict Africa.

It is against this background that this paper seeks to achieve the following objectives:

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- i. To underscore the ultimate goal of the African Traditional conflict Management Mechanisms;
- ii. To highlight both the justification and implication of complementarity relationship between the African traditional conflict management mechanisms and the formal/modern state mechanisms on the restorative justice and reconciliation features of the African system.
- iii. To illustrate with selected case studies across Africa; and
- iv. To conclude with some recommendations.

## 1. **ATTAINING JUSTICE (RESTORATIVE) AND PROMOTING RECONCILIATION AS THE ULTIMATE GOAL OF THE AFRICAN TRADITIONAL CONFLICT MANAGEMENT MECHANISMS**

In reviewing the literature<sup>1</sup> on African Traditional Conflict Management Mechanisms, one pointer is clear: - attaining restorative justice<sup>2</sup> and promoting reconciliation and peace in a fragile or conflict-ridden society based on the following salient features of traditional justice systems<sup>3</sup>: -

- i. **Traditional Justice systems tend to be located in face-to-face communities where the problem is viewed as not only that of the disputants or offender, but also that of the whole community:** - Informal traditional systems tend to exist in face-to-face communities where, what has been called, “multiplex relationships” exist. That is, relationships which are based on past and future economic and social dependence, and cross-cutting ties of kinship.
- ii. **The emphasis is on the restoration of social harmony rather than the determination of guilt or innocence:** - As Allott has observed in respect of traditional justice in Africa, the guiding objective of the traditional system is to restore peace and social harmony within the community by ensuring that disputants are reconciled: “At the heart of (traditional) African adjudication lies the notion of reconciliation or the restoration of harmony. The job of a court or

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<sup>1</sup> See generally, Adekanye, J. B., *Linking Conflict Diagnosis Conflict Prevention and Management in Contemporary Africa: - Selected Essays (2007)*; - Ababa Press Ltd, Lagos, Nigeria; see also *Penal Reform International/Joanna Stevens (1998)*: - *A Review of Literature on Traditional Informal Justice Systems in Africa, South Asia and the Caribbean*; Also see Huyse, Luc and Mark Salter (Eds). (2008): - *Traditional Justice and Stockholm: - International Idea*; United Nations (2004): - *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*. Report to the UN Secretary-General. UN Doc.S/2004/616.8. New York: UN.

<sup>2</sup> Restorative Justice Programmes are based on the belief that parties to a conflict ought to be actively involved in resolving it and mitigating its negative consequences. They are also based, in some instances, on a will to return to local decision-making and community building. These approaches are also seen as means to encourage the peaceful expression of conflict, to promote tolerance and inclusiveness, build respect for diversity and promote responsible community practices. Quoted in UN Office on Drugs and Crime, Vienna/New York (2006). Handbook on Restorative Justice programmes at p.5; Also see Ladan M. T., (2011): - “Enhancing Access to Justice in Criminal Matters, in Nigerian Bar Journal, Nigerian Bar Association, Abuja, Vol. 7, No. 1, August 2011 at pp.31-64.

<sup>3</sup> See Penal Reform International (1998) supra note 1 at pp.6-15.

an arbitrator is less to find the facts, state the rules of law, and apply them to the facts than to set right a wrong in such a way as to restore harmony within the disturbed community. Harmony will not be restored unless the parties are satisfied that justice has been done. The complainant will accordingly want to see that the legal rules, including those which specify the appropriate recompense for a given wrong, are applied by the court. But the party at fault must be brought to see how his behavior has fallen short of the standard set for his particular role as involved in the dispute, and he must come to accept that the decision of the court is a fair one. On his side he wants an assurance that once he has admitted his error and made recompense for it he will be reintegrated into the community."<sup>4</sup>

- iii. **The process involves a high degree of public participation:** - As noted, under the traditional system a conflict between two members of a community is regarded as the problem which afflicts the entire community. In order to restore harmony, therefore, there must be general satisfaction among public, as well as the disputants, with the procedure and the outcome of the case. Public consensus is, moreover, necessary to ensure enforcement of the decision via social pressure. Allott<sup>5</sup> notes that other modes of reaching a solution are to be found in various African societies, but that reconciliation based on consensus is by far the most characteristic. A chief or head of an extended family may, for example, "decree" the way in which a breach of norm is to be rectified. It is to be noted, however, that the settling of disputes is a primary role of chief/elders and that a failure to carry out this task successfully would, over the long term, undermine their authority. A degree of deference must, therefore, be given to public opinion.

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<sup>4</sup> Allott, A. N (1968): *African Law*, in Derrett at p.145

<sup>5</sup> Ibid p.146

- iv. **Traditional arbitrators are usually chiefs, elders or influential persons from the community and know both parties to the dispute:** - Customary arbitrators are usually of higher social status than the disputants. They hold their position by virtue of their age, inherited status, or influence within the community, and represent the community in articulating the consensus on shared norms and values.<sup>6</sup> As they are not strangers to the disputants and cannot be said to be disinterested parties, traditional arbitrators cannot be regarded as “impartial” in the formal sense. Both Merry and Ibokwe contend, however, that their impartiality is secured by crosscutting ties which link them to both parties.<sup>7</sup> Furthermore, as Bush argues, their personal knowledge of the community, the dispute, the nature of previous settlements, and the disputants (including personal histories and reputations) is “vital to [the arbitrators’] ability to resolve the case and they are expected to use it in doing so.”
- v. **A decision is more in the nature of a compromise which takes into account not only customary rules of law but also the underlying factors which led to the dispute and factors which may have a bearing on successful reconciliation:** - In order to achieve lasting reconciliation, the traditional arbitrator may take many factors into account. The indirect or underlying causes of the conflict, and not merely the specific charge of the complainant, must inform any proposed solution.
- vi. **During the hearing of a dispute, traditional judges will not rule out testimony on the basis of strict rule of evidence. They do, nevertheless,**

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<sup>6</sup> Ibokwe, V. C. (1998): *Socio-Cultural Dimensions of Dispute Resolution: Informational Justice Processes among the Ibo-Speaking Peoples of Eastern Nigeria and their Implications for Community/Neighbouring Justice System in North America*. African Journal of International and Comparative Law, Vol. 10, at p.456; Also see, Merry, S. (1982): *The Social Organisation of Mediation in Nonindustrialised Societies: Implications for Informal Community Justice in America*, in Abel (ed), at p.34; See also, Bush, (1979): *A Pluralistic Understanding of Access to Justice: Developments in Systems of Justice in African Nations*, in Cappelletti & Garth at p.269.

<sup>7</sup> Ibid, Merry, (1982) at p.31; Ibid, Ibokwe, (1998) at p. 456.

**distinguish sharply between primary and circumstantial evidence in reaching a decision.**

- vii. **Professional legal representation is not a feature of the traditional justice system:** - Professional legal representation is not a feature of the traditional justice system, nor can it be regarded as required. As noted above, the traditional arbitrator carries out the work normally performed by lawyers prior to a formal court hearing, “namely to listen to the whole story as it is poured out, to ignore what is irrelevant, and then to analyse the legal issues involved, and marshal the evidence”.<sup>8</sup>
- viii. **The process is voluntary and the “decision” based on agreement:** - For the effective restoration of social harmony, it is important that there is *genuine* acceptance of any ruling. Thus, both parties are asked to give their unqualified consent to any procedure before commencement. Customary arbitrators will not give a default judgment if the defendant fails to appear or walks out.<sup>9</sup> On the “very rare” occasion that either party disagrees with the *final* decision, “the meeting comes to an end and formal court adjudication will be the only available option”.<sup>10</sup>
- ix. **“Penalties” emphasise restoration as opposed to retribution:** - As the main purpose of traditional arbitration is to restore social harmony and reconcile the parties, “penalties” usually focus on compensation or restitution in order to restore *status quo*, rather than punishment.<sup>11</sup> It is, however, sometimes the practice of traditional courts to order the restitution of, for example, twice the number of the stolen goods to their owner, “especially when the offender has been caught in *flagrante delicto*” and fines may be

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<sup>8</sup> Van Velson, (1969): *Procedural Informality, Reconciliation, and False Comparisons*, in Gluckman at p.142.

<sup>9</sup> Johnston, (1978): *Giriama Reconciliation*. African Law Studies, No 16, at p.96.

<sup>10</sup> Supra note 6, Ibokwe, (1998) at p.459; See also Thacker, (1998): *Traditional Justice Systems*. Petty & Brown (eds). (1998), at p.89.

<sup>11</sup> See Merry, Supra note 6, at p.20.

levied.<sup>12</sup> Imprisonment has never existed as a penalty for any offence but corporal punishment is or has been occasionally administered by a number of traditional systems – mainly on juvenile offenders (but in Africa, never on females).<sup>13</sup>

- x. **Enforcement is secured through social pressure rather than physical coercion:** - In stateless societies, “enforcement lies within the complex of relationships” which are based on reciprocal obligations through prior cooperation and cross-cutting ties of kinship.<sup>14</sup> Thus, although under traditional systems, formal coercion (e.g., policing) is rarely resorted to; social pressure plays a powerful role in achieving compliance.<sup>15</sup> Given the large degree of public participation in reaching a solution to the dispute, once a final ruling of the village head or council or elders is accepted by the disputants, disobedience is tantamount to disobeying the entire community and may attract social ostracism.<sup>16</sup> This “most dreaded” sanction involves the withdrawal by other members of the community of both social contract and economic cooperation.<sup>17</sup> According to Oputa,<sup>18</sup> to be adrift from ones group in traditional African society is a “living death”.

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<sup>12</sup> Elias, T. O (1969): *Traditional Forms of Public Participation in Social Defence*. International Review of Criminal Policy, No.27, at p.20; Also see, MINARS, (1998): *Traditional Justice in Angola*. Petty & Brown (eds), (1998), at p.94.

<sup>13</sup> Elias, (1952): at p.288.

<sup>14</sup> Roberts, S. (1979): *Traditional and Change at Mochudi: Competing Jurisdictions in Botswana*. African Law Studies, No. 17, at p.51.

<sup>15</sup> See Ibokwe, Supra note 6, at p.469; Also see Merry, Supra note 6, at p.36.

<sup>16</sup> Ibid, Ibokwe, at p.459.

<sup>17</sup> Supra note 14, at pp.27, 39, 65

<sup>18</sup> Oputa (1975): *Crime and the Nigeria Society*, in Elias, Nwabara & Akpamgbo at p.8.



## **2. JUSTIFICATION AND IMPLICATION OF COMPLEMENTARITY RELATIONSHIP BETWEEN THE AFRICAN TRADITIONAL CONFLICT MANAGEMENT MECHANISMS AND THE MODERN / FORMAL STATE SYSTEM ON RESTORATIVE JUSTICE AND RECONCILIATION FEATURES OF THE AFRICAN SYSTEM**

The concept of complementarity is not a priori hard to understand because it is basically about promoting interaction or co-existence of two or more equally authoritative conflict management mechanism or systems of justice or legal regimes.<sup>19</sup> Infact, complementarity in practice, forces two or more legal regimes or justice systems or other mechanism for conflict management to engage with each other and appreciate each other's limited capacity (to investigate, prosecute cases and administer justice or resolve conflicts etc).<sup>20</sup>

### **2.1 Justifying Complementarity**

The analysis of African traditional methods of conflict management is not a new phenomenon. However, the extant literature on these institutions and processes is in-ward looking, presenting them as if they existed in a political and structural vacuum. The trend today by many African peace and security analysts and conflict management scholars is to transcend this approach, by focusing on the hybrid nature or complementarity of the relationships between state structures and traditional institutions of governance, justice and conflict management.<sup>21</sup> Hence the

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<sup>19</sup> See Ladan, M. T., (2010): - The Principle of Complementarity in Review: - (Darfur) Sudan, Uganda and Congolese crises. A paper presented at a one-day policy dialogue on the review of the Rome Statute of the International Criminal Court. Organized by the Nigerian Institute of Advanced Legal Studies, Lagos, on 14<sup>th</sup> April, 2010.

<sup>20</sup> See Ifenu, E., (2012): - *Who will save these Endangered Species? Evaluating the Implications of the Principle of Complementarity on the Traditional African Conflict Resolution Mechanisms*, in African Journal of International and Comparative Law 20(1)(2012): - 22-41; See also Jenniffer, T., (2012): - 'Is Complementarity the Right Approach for the International Criminal Court's Crime of Aggression? Considering the Problem of Overzealous National Court Prosecutions', in Cornell International Law Journal Vol. 45 (2012)p. 569 – 601.

<sup>21</sup> See Martha M, and Kwesi S.G., (2012): - Africa Dialogue Monograph Series No. 2/2012: - Integrating Traditional and Modern Conflict Resolution: - Experiences from selected Cases in Eastern and the Horn of Africa.

focus is on analyzing the intricate patterns of interactions between state and local/traditional institutions of conflict management. Particular attention is given these days to the relevance of this interface in post-colonial states in the post-conflict phase.<sup>22</sup>

Evidence of literature abound on case studies in respect the new trend mentioned above. For example, Assefa Abebe's<sup>23</sup> paper investigated how the Oromo people in Ethiopia, one of the largest ethnic group in the Horn of Africa, deal with conflict using indigenous mechanism for the prevention and resolution of conflict, and examined how effective these mechanisms are and how they work. The author drew the attention of governments of the Horn of Africa countries to streamline and use these indigenous mechanisms to make the region more stable and peaceful.

Also, Martha Mutisi and Kwesi's work<sup>24</sup> comprising five chapters all focused on Eastern and the horn of Africa, the Contributions follow a case study approach to highlight the modern traditional connections. These case studies are: - Afar in Ethiopia, Darfur, Rwanda, Uganda and Sudan. Cumulatively, their work confirms that traditional institutions can play varied roles in preventing and resolving conflicts. The case studies vary in length, methodological; approaches and schools of thought, reflecting the styles of the various authors. Despite their diversity, some common themes, perspectives and observations can be discerned. Those communities possess local capacities for promoting peaceful co-existence. The role of traditional institutions in conflict resolution continues to burgeon. **This is because in many post-colonial and post-conflict African States, governmental capacities for managing conflicts are still weak or ineffective. State institutions are not**

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Also see Assefa, A., (2012): - Indigenous Mechanisms for the Prevention and Resolution of Conflict: - The Experience of the Oromo in Ethiopia: - [http://www.ossreas.net/index.php?option=com\\_content&view=article](http://www.ossreas.net/index.php?option=com_content&view=article). Visited on 11/8/2013.

<sup>22</sup> Ibid.

<sup>23</sup> Assefa, supra note 21.

<sup>24</sup> Martha M., supra note 21

**sufficiently capacitated to undertake conflict management at all levels, due largely to bureaucratic tendencies, underfunding and under-staffing.**

In Nigeria, the role of traditional political institutions in conflict management cannot be over-emphasised. According to Odumosu,<sup>25</sup> the smallest political unit is the nuclear family, which in Nigeria is usually headed by a male head of household. The next political unit in terms of size is the extended family, which is usually headed by the eldest or most influential member of the family. In setting a case, each quarter or ward comprising many family compounds is headed by a chief, in the case of the Yoruba, chiefs are called *Baale*. The town or city comprising many quarters is headed by the traditional leader called *Oba* in the case of the Yoruba, *Emir* in the case of the Hausa, *Obi* or *Eze* in the case of the Igbo, etc. one of the major functions of these traditional political institutions is to resolve conflicts, whether at the urban, village, neighborhood, or household level.

Cases brought before the head of the household (i.e., in a nuclear family) usually include conflicts among co-wives, brothers and sisters, truancy, street fights, and general misbehavior involving his children and foster children. Cases that cannot be resolved at the interpersonal or family level are usually taken to the head of the extended family or the ward chief. These cases include land disputes, disputes in the extended family, and disputes over inheritance. Such cases are usually given immediate attention to prevent any escalation into violence that threatens the survival of the entire lineage or ward.

The *Oba* and his council of chiefs comprise the highest traditional institutional for conflict resolution. Cases brought before the *Oba-in-council* usually pertain to land ownership and settlement of political rifts. The ultimate aim of the traditional

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<sup>25</sup> See Inter-Ethnic and Religious Conflict Resolution in Nigeria (Eds) Uwazie, E.E., et al, (1999) Lexington Books, Maryland, USA, at pp.63-64.

judicial system is to restore peace by settling disputes amicably. In other words, restoration of harmony is what is paramount in the traditional system.

A special political unit found in most non-Hausa urban centres is the one headed by the Sarkin Hausawa. Whatever the Hausa migrate, they always appoint from among themselves a leader called the Sarkin Hausawa (ruler of the Hausa people) who normally functions as the official intermediary between the Hausa migrants and their host community. The *sarkin* also settles disputes among the immigrants. The sarkin also has ward heads called the *miungwa* (owner of the ward). They later resolve conflicts at ward level within the *sabon gari* where the immigrants settle. Conflicts that cannot be resolved at the ward level are referred to the sarkin Hausawa. When resolving a conflict, the sarkin, like the Oba-in-council, usually summons his chiefs and a committee of elders called *ban gari*. Cases brought to the sarkin within the *sabon gari* include physical assault, petty thefts, divorce and sharing of property of the deceased.

According to Barkindo,<sup>26</sup> today, Emirates in Northern Nigeria engaged in dispute resolution that is not binding, as they have no coercive or custodial powers. As a result of that, and because of their closeness to the people and other factors, their capacity is built over this sector and they have excelled in disputes resolution which proved to be both effective and efficient. The following areas are much engaged at the emirate authorities amongst others:

- a) Land disputes involving neighbours or general land disputes;
- b) Family disputes, particularly over non justiciable issues;
- c) Matrimonial issues;
- d) General grievances ranging from poverty to socio-legal matters that need proactive rather than reactive approach for solutions.

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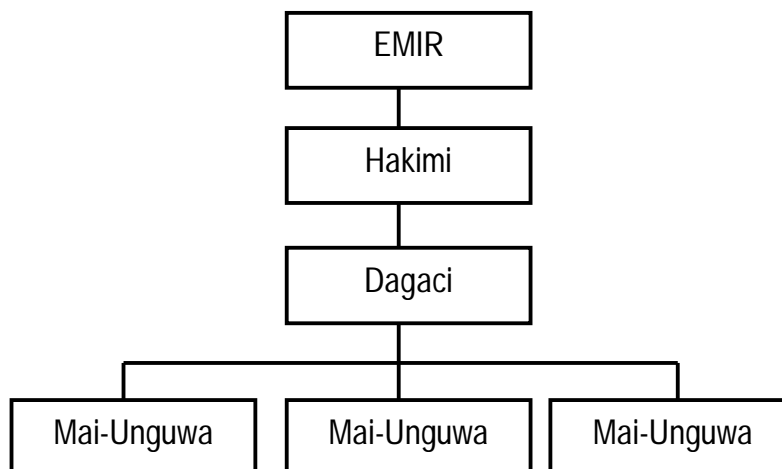
<sup>26</sup> See Alternative Dispute Resolution and Some Contemporary Issues: - Legal Essays in Honour of Justice I.T. Muhammad (2010): - (Eds.) I.A. Aliyu, et.al., M.O. Press, Kaduna, Nigeria, at pp.217-242.

To the knowledge of the writer, Emirate authorities at various levels are involved in Local Government Security meetings and some serve as ex-officio members of certain committees or Boards. The practice in many areas of Northern Nigeria is that in some places if the police go for an arrest, they first inform the ward head who sometimes directs them to the house of the offender or assists them in any way possible.

Practices may differ from one state to another, however, the Emirate system is indirectly incorporated into the government structures and on certain issues, they are the shadow government for the local populace.

### **Kano Emirate as a Case Study:**

a) **Facts and figures on Justice delivery at Kano Emirate:** - Currently, Kano Emirate is made up of the 44 Local Government Areas in the State, each LGA making up of a District (*Gunduma*) under a District Head (*Hakimi*). Grievances are heard by his Royal highness the **Emir, 44 District heads, 1,002 Village heads and 6,490 ward heads** throughout the Emirate. The following chart describes it better:



As said earlier, at all levels of the Emirate, matters are handled by the personnel of the Emirate authority; some of these matters include dispute resolution.

Below is the statistics of the matters handled for three years by the Emir's court alone.

1. In the year 2003 – 2,961 matters were disposed.
2. In 2004 – 3,441 matters were disposed
3. 2005 – 2,874 matters were disposed.

In 2005 alone, the Emir's court heard 715 dispute resolution matters.

## **2.2 The Purposes “Complementarity” Serves in International and National Criminal Justice Systems Debate<sup>27</sup>**

There are several explanations for why the Rome Statute adopted the complementarity approach. In contrast to the creation of the International criminal Tribunal for Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR), which required only that Security Council members endorse the tribunals' approach to jurisdiction, a significant number of the states present at the Rome Conference needed to agree to the International Criminal Court (ICC)'s approach. Thus, the differences in the creation of the ICTY and ICTR on the one hand, and the ICC on the other, partly explain the divergent approaches.

One main interest complementarity upholds “is the *sovereignty* both of State Parties and third states.” Complementarity thus is “designed to encourage states to exercise their jurisdiction” to prosecute ICC crimes. Further, complementarity “forces the ICC and national legal systems to engage with one another, at the judicial level.” Indeed, it is unlikely that states would have consented to the creation of an international criminal court “without the principle of complementarity... because the

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<sup>27</sup> See Jennifer, *supra* note 20, at pp. 578-580.

intrusion of the court on the exercise of their sovereign prerogatives would have been too much [to] bear.”

A second interest that complementarity serves “is the *interest of the international community* in the effective prosecution of international crimes, the endeavour to put an end to impunity, and the deterrence of the future commission of such crimes.” By working to define the interrelationship between the ICC and national courts in prosecuting the world’s gravest crimes, complementarity is clearly trying to ensure that prosecutions do occur, thereby furthering the fight against impunity. The Statute thus attempts to “strike an adequate balance between this interest [in ending impunity] and state sovereignty.” In other words, complementarity “balances [the ICC’s] supranational power against the sovereign right of states to prosecute their own nationals without external interference.”

A third interest that complementarity serves has to do with capacity limitations. Namely, the ICC simply cannot prosecute all of the gravest instances of genocide, war crimes and crimes against humanity within its jurisdiction, and will therefore need to rely on national courts (and/or hybrid tribunals) to conduct additional prosecutions:

*In the fight against impunity, the ICC will only be able to serve as a court of last resort where justice cannot be achieved on a national level. Besides, the complementarity principle pays tribute to the realization that national authorities are closer to evidence and that the crimes under the jurisdiction of the court are normally best prosecuted in the state where they have been committed.*

Complementarity therefore encourages national courts to conduct such prosecutions, only reserving them for the ICC when national courts are unwilling or unable to investigate and/or prosecute.

Thus, complementarity is “primarily designed to strike a delicate balance between state sovereignty to exercise jurisdiction and the realization that, for the

effective prevention of [grave international] crimes and impunity, the international community has to step in to ensure these objectives....”

### **2.3 THE IMPLICATION OF COMPLEMENTARITY RELATIONSHIP ON AFRICAN TRADITIONAL CONFLICT MANAGEMENT MECHANISMS<sup>28</sup>**

The use of truth and reconciliation commissions (TRCs) for post-conflict resolutions is undoubtedly not autochthonous to the African region; however, the model adopted by the South African government to address gross violations of human rights during the apartheid era was clearly built on the template of traditional African conflict resolution.

The South African TRC was clearly an archetype of African conflict resolution mechanism. Apart from its broad outreach involving participation in the process by individuals, groups and communities, it also successfully blended the demand for justice with the need to ensure reconciliation. The success of the South African Truth and Reconciliation Commission was so profound that, ‘of the many truth commissions to date, this has been the one that has most effectively captured public attention throughout the world and provided the model for succeeding truth commissions’ as an alternative to criminal prosecution, as opposed to others that are complementary to it. It has even stimulated the idea of a permanent Court of Arbitration in the African region. Some international lawyers criticized the TRC, however, arguing that by granting amnesty to perpetrators of international crimes, it travestied justice and encouraged impunity.

Like other African conflict resolution mechanism previously discussed, the South African TRC model has caved in to the ‘pressures of the internal legal paradigm’, with Sierra Leone’s Truth and Reconciliation Commission (SLTRC) as a classic example. As part of a negotiated peace deal between the government of

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<sup>28</sup> See Ifeonu, *supra* note 20, at pp.34-39.



Sierra Leone and the rebel Revolutionary United Front, the SLTRC was established, modeled on the South African TRC. Accordingly, the Commission was presented as an alternative to prosecutions, not a complement to them.

The establishment of the Special Court for Sierra Leone (SCSL) in 2000 to prosecute persons who bear the greatest responsibility for the Sierra Leonean armed conflict changed the complexion of the SLTRC. Apart from the TRC being stripped of its power to grant amnesty particularly in respect of persons falling within the jurisdiction of the Court, its status changed from that of offering an alternative to prosecution to having a complementary relationship with it. In a letter to the United Nations Security Council, the Secretary-General stated that 'care must be taken to ensure that the Special Court for Sierra Leone and the Truth and Reconciliation Commission will operate in a "complementary" and mutually supportive manner'.

As eventually became evident, the complementary role that the SLTRC was mandated to play divested it of its 'Africanness' and affected its ability to function effectively, as an instrument of reconciliation in post-conflict Sierra Leone, unlike its South African counterpart. Rather than the traditional atmosphere of contrition, penitence and reconciliation, the SLTRC's relationship 'complementary' with the SCSL created what was regarded as a quasi-judicial setting. As will be shown shortly, this did not help it in its assignment of enhancing reconciliation in post-conflict Sierra Leone.

The emerging transformation of African conflict resolution mechanisms is not without some serious implications. The use of these traditional mechanisms for the 'neotraditional' is not only troubling from the perspective of protecting fundamental human rights, but could extinguish the last flames of hope for reconciliation in post-conflict Africa.

The greatest implication of the ongoing transformation of African conflict resolution mechanisms is the creation of a new paradigm of conflict management in

the region. This is coming about through the systemic substitution of the region's preference for restorative approaches with the Western retributive form of punishment for crime. For a region in search of peace and reconciliation in the face of escalating armed conflicts, an emphasis on retributive justice, is evident in the emerging transformation of traditional reconciliatory mechanisms, is not an attractive development. Speaking about the *gacaca* courts, one commentator argued that:

*Gacaca as presently envisioned has only limited ability to promote reconciliation. Although gacaca has the potential to rebuild communities, it does so under a cloud of punishment and retribution. These values are not necessarily conducive to building a new peaceful Rwanda. While gacaca does not necessarily exacerbate these problems, Rwanda's reliance on gacaca as presently envisioned constitute a wasted opportunity to promote values of reconciliation and reconstruction.*

The establishment of the SLTRC at the end of the armed conflict in Sierra Leone initially modeled on the South African TRC, was viewed as a panacea to future conflicts in the state; however, the effectiveness of the SLTRC in delivering on its mandate of reconciliation was hampered by its strange 'complementary' relationship with the SCSL. For instance, concern by perpetrators of gross violations of human rights that their testimonies before the SLTRC could be used for criminal prosecution by the Court discouraged them from testifying. Furthermore, even the request of a prisoner in the custody of the Court to testify in public before the SLTRC was refused by the Court in a ruling in which it described the exercise as a 'spectacle' and 'broadcast'.

As has been demonstrated above, the ongoing transformation of traditional African conflict resolution mechanism is damaging on two important fronts. First, from the perspective of due process and as shown by the *gacaca* courts, there is little guarantee of the right of accused persons to fair trial, more so when it is not

clear whether such consideration is relevant for the purposes of admissibility under Article 17 of the Rome Statute of the ICC; and second, and more importantly, it compromises the chances of post-conflict reconciliation in the affected states.

## **2.4 AFRICAN REGIONAL FRAMEWORKS ON CONFLICT PREVENTION, MANAGEMENT AND RESOLUTION**

Understanding the devastating effects of poor conflict management regime in Africa on the people, economies and national and regional security as well as sustainable development in Africa, the Assembly of African Heads of State and Government adopted<sup>29</sup> a Declaration on the Establishment within the African Continent of a Mechanism for Conflict Prevention, Management and Resolution, 1993. The Assembly declared, among others, the following: -

- a) No single internal factor has contributed more to the present socio-economic problems in the Continent than the scourge of conflicts in and among our countries. They have brought about death and human suffering, engendered hate and divided nations and families. Conflicts have forced millions of our people into a drifting life as refugees and displaced persons, deprived of their means of livelihood, human dignity and hope. Conflicts have gobbled-up scarce resources, and undermined the ability of our countries to address the many compelling needs of our people.
- b) We saw in the establishment of such a mechanism the opportunity to bring to the process of dealing with conflicts in our continent a new institutional dynamism, enabling speedy action to prevent or manage and ultimately resolve conflicts when and where they occur.

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<sup>29</sup> Adopted by the 29<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government held in Cairo, Egypt from 28-30 June 1993, (AHG/Decl.3/xxix.)

- c) The Mechanism will have a primary objective, the anticipation and prevention of conflicts. In circumstances where conflicts have occurred, it will be its responsibility to undertake peace-making and peace-building functions in order to facilitate the resolution of these conflicts. In this respect, civilian and military missions of observation and monitoring of limited scope and duration may be mounted and deployed. In setting these objectives, e are fully instance, prevent the emergence of conflicts, and where they do inevitably occur, stop them from degenerating into intense or generalized conflicts. Emphasis on anticipatory and preventive measures, and concerted action in peace-making and peace-building will obviate the need to resort to the complex and resource-demanding peace-keeping operations, which our countries will find difficult to finance.
- d) Within the context of the Mechanism for Conflict Prevention, Management and Resolution, the OAU shall closely co-ordinate its activities with the African regional and sub-regional organisations and shall co-operate as appropriate with the neighbouring countries with respect to conflicts which may arise in the different sub-regions of the Continent.

Also, on July 9, 2002, the Heads of State and Government of the African Union Member States adopted in Durban, South Africa, the Protocol<sup>30</sup> Relating to the Establishment of the Peace and Security Council of the Union, which was launched in May 2004. The Council was created to promote peace, security and stability in Africa, and serves as the standing decision-making organ of the Union for the prevention, management and resolution of conflicts. The organs of the council include the AU Commission, the Continental Early Warning System, the Panel of the Wise, the Peace Fund and the African Standby Force. Article 16 of this Protocol

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<sup>30</sup> Entered into force on 26 December, 2003

provides for relationship with the Regional Mechanisms for Conflict Prevention, Management and Resolution, which are part of the overall security architecture of the African union, which has the primary responsibility for promoting peace, security architecture of the African Union, which has the primary responsibility for promoting peace, security and stability in Africa.<sup>31</sup>

### **3. CONCLUSION**

It is evident from the above discussion that given the increasing search for alternatives and answer to the African problematique, a critical review of the desirability or otherwise of the move towards complementarity relationship between African Traditional Conflict Management Mechanisms and Formal State Conflict Management Institutions and processes as well as international justice system in order to resolve the challenges posed by conflicts in the continent is both timely and responsive. The pointers from the summary of the few selected case studies referred to, revealed that Traditional Mechanisms of conflict management in Africa are also relevant in building a sense of community and facilitating ownership of peace processes by communities.

Further revealed is the fact that traditional institutions are more restorative and conciliatory than the formal/modern state mechanisms, which emphasise the establishment of guilt and execution of retribution.

Hence, the ultimate need for an effective, integrated formal state-traditional mechanism for conflict management in order to promote the larger agenda for peace and security in African societies.

There is however, the ultimate need for ensuring a delicate balance in building complementarity relationship between the African Traditional Conflict

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<sup>31</sup> See also a related ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security (1999). Adopted by the 23<sup>rd</sup> Session of the Authority of Heads of State and Government of Economic Community of West African States (ECOWAS) in Lome, Togo on 10 December 1999.

Management Mechanisms and Modern State Mechanisms, such that the integrity is preserved of the traditional mechanism as restorative and reconciliatory tools for post-conflict promotion of peace and justice.