

**Core Principles of Culturally Appropriate Justice: Examining African Philosophy and its
Shift from Retribution to Restoration**

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Core Principles of Culturally Appropriate Justice?: Examining African Philosophy and its Shift from Retribution to Restoration

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Abstract

This paper discusses the core principles of culturally appropriate justice in Africa. The paper observes that culture is a fundamental determinant of justice in Africa since it determines and shapes the process of conflict management among African societies. The paper discusses the specific ways through which culture shapes justice systems in Africa. Despite its role in ensuring appropriate and effective justice systems, the paper observes that the role of culture in conflict management and access to justice in Africa has largely been eroded to the adoption of Western-centric justice approaches which focus on retribution. In light of these concerns, the paper discusses how the ideal of culturally appropriate justice in Africa can be achieved by shifting from processes which focus on retribution to those that seeks to promote restoration.

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1.0 Introduction

Justice plays a fundamental role in unlocking Sustainable Development. It has been observed that justice in all its forms is an essential dimension of the social contract, a determining factor in leaving no one behind in the pursuit of Sustainable Development¹. Through appropriate and effective approaches, justice can support economic growth, environmental conservation and social harmony while ensuring that development policies and priorities do not leave anyone behind². In addition, it has been observed that by building effective and accountable justice systems, it is possible to ensure fairness, inclusivity, equity and respect for human rights towards Sustainable Development³.

However, in order to realise the ideal of justice towards Sustainable Development, it is imperative to consider the role of culture. For instance, it has been observed that culture plays a pertinent role in ensuring effective and appropriate justice systems and approaches⁴. In particular, the conception of justice is culturally determined meaning that what amounts to justice varies across cultures⁵. In the context of conflict management, it has been observed that culture affects the way individuals and societies name, frame, and attempt to tame conflicts⁶. Culture can therefore determine how justice is perceived across different contexts since it shape how individuals and societies approach conflicts and the strategies they use to resolve them⁷. Building effective and appropriate justice systems therefore requires embracing the role of culture for sustainable and durable outcomes.

This paper discusses the core principles of culturally appropriate justice in Africa. The paper observes that culture is a fundamental determinant of justice in Africa since it determines and shapes the process of conflict management among African societies. The paper discusses the specific ways through which culture shapes justice systems in Africa. Despite its role in ensuring appropriate and effective justice systems, the paper observes that the role of culture in conflict management and access to justice in Africa has largely been eroded to the adoption of Western-

¹ United Nations Development Programme., 'Justice and Sustainable Development' Available at https://www.undp.org/sites/g/files/zskgke326/files/2025-01/report_justice_anddevelopment_2023.pdf (Accessed on 12/08/2026)

² Ibid

³ United Nations Development Programme., 'Justice and Sustainable Development' Available at https://www.undp.org/sites/g/files/zskgke326/files/2025-01/report_justice_anddevelopment_2023.pdf (Accessed on 30/07/2026)

⁴ Fischer. R., 'Justice and Culture' Available at https://link.springer.com/chapter/10.1007/978-1-4939-3216-0_25 (Accessed on 12/08/2026)

⁵ Van den Bos. K., 'Justice and Culture' Available at https://research-portal.uu.nl/ws/files/275091818/978-3-031-98812-7_9.pdf (Accessed on 12/08/2026)

⁶ LeBaron. M., 'Culture and Conflict' Available at https://www.beyondintractability.org/essay/culture_conflict (Accessed on 12/08/2026)

⁷ Yamini. S et al., 'Culture and Conflict Management Strategy: The Mediating Role of Instrumental Concerns' Available at <https://journals.sagepub.com/doi/10.1177/00220221241312414> (Accessed on 12/08/2026)

centric justice approaches which focus on retribution. In light of these concerns, the paper discusses how the ideal of culturally appropriate justice in Africa can be achieved by shifting from processes which focus on retribution to those that seeks to promote restoration.

2.0 Culture and Access to Justice in Africa

Culture has been a fundamental part of justice systems and processes in Africa since time immemorial. For example, it has been observed that most African societies operate in a cultural and political landscape that gives precedence to communal rights as opposed to individual interests⁸. As a result, such collectivistic cultures prefer conflict management and access to justice strategies and approaches that are harmony-inducing⁹. African cultures therefore give prominence to non-adversarial techniques towards effective and appropriate conflict resolution¹⁰. Conflict management in most African communities takes the form of customary conflict resolution which focuses on restorative justice in order to promote social harmony and build lasting relationships among conflicting parties¹¹.

Before the introduction of Western-centric justice systems in Africa, communities all over the continent had already developed their own traditional methods and mechanisms of preventing, managing and resolving conflicts¹². It has been observed that throughout history, Africa societies have had frameworks in place for the resolution of conflicts and for preventing their escalation into violence, in order to preserve the social fabric that tied these communities together¹³. The process of conflict management in African societies is well-entrenched in the traditions, customs, norms and taboos of the people¹⁴.

It has been observed that throughout Africa, the culture and traditions of African communities emphasise harmony/togetherness over individual interest and humanness as expressed in the African philosophy of *Ubuntu/Utu* which guides individuals and communities all over the

⁸ Ogbaharya. D., 'Alternative Dispute Resolution (ADR) in Sub-Saharan Africa: The Role of Customary Systems of Conflict Resolution (CSCR).' Available at https://www.researchgate.net/publication/228182138_Alternative_Dispute_Resolution_ADR_in_Sub-Saharan_Africa_The_Role_of_Customary_Systems_of_Conflict_Resolution_CSCR (Accessed on 13/08/2026)

⁹ Kaushal. R., & Kwantes. C., 'The Role of Culture and Personality in Choice of Conflict Management Strategy.' *International Journal of Intercultural Relations* 30 (2006) 579–603

¹⁰ Ibid

¹¹ Ogbaharya. D., 'Alternative Dispute Resolution (ADR) in Sub-Saharan Africa: The Role of Customary Systems of Conflict Resolution (CSCR).' Op Cit

¹² Ademowo. A., 'Conflict Management in Traditional African Society.' Available at https://www.researchgate.net/publication/281749510_Conflict_management_in_Traditional_African_Society (Accessed on 13/08/2026)

¹³ Kariuki. F., 'Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/Conflict-Resolution-by-Elders-successes-challenges-and-opportunities-1.pdf> (Accessed on 13/08/2026)

¹⁴ Ademowo. A., 'Conflict Management in Traditional African Society.' Op Cit

continent¹⁵. The African philosophy of *Ubuntu/Utu* urges individuals and societies to live according to values that promote the well-being of all at the expense of individual needs and interests. These values include sympathy, compassion, benevolence, solidarity, hospitality, generosity, sharing, openness, affirming, being available, kindness, caring, harmony, interdependence, obedience, collectivity and consensus¹⁶. In addition, it has been observed that *Ubuntu/Utu* seeks to deter vengeance, confrontation and retribution and on the other hand values life, dignity, compassion, humaneness harmony and reconciliation¹⁷. Conflict management in African societies is therefore guided by the African philosophy of *Ubuntu/Utu* with focus being on creating consensus, facilitating reconciliation, fostering peace, and restoration of social harmony and cohesion¹⁸.

Culture therefore serves as an important vehicle of accessing justice in Africa. In particular, the African philosophy of *Ubuntu/Utu* has guided access to justice and conflict management across Africa for many centuries with humanness, peace, justice, harmony and reconciliation being at the centre of decision-making process¹⁹. In order to achieve this goal, African communities have embraced appropriate conflict management strategies including negotiation, mediation, conciliation and traditional justice systems which honour the philosophy of *Ubuntu/Utu* by focusing on cooperation, reconciliation, harmony, and peaceful co-existence among individuals and within communities²⁰. For many centuries, conflict management and access to justice among African societies has involved the use of informal negotiation, mediation, reconciliation and arbitration among other techniques which are administered by institutions such as the council of elders²¹. It has been observed that these techniques fit comfortably within traditional concepts of African justice, particularly its core values of peace, reconciliation and restoration of social harmony²².

¹⁵ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

¹⁶ Mugumbate. J., & Nyanguru. A., 'Exploring African Philosophy: The Value of Ubuntu in Social Work.' Available at <https://ro.uow.edu.au/cgi/viewcontent.cgi?article=4272&context=sspapers&httpsredir=1&referer#::~:txt=Ubuntu%20can%20best%20be%20described,ngumuntu%20ngabantu%20in%20Zulu%20language> (Accessed on 13/08/2026)

¹⁷ Ibid

¹⁸ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

¹⁹ Batchelor. B., Chetty. N., & Makore. S., 'Incorporating Afrocentric Alternative Dispute Resolution in South Africa's Clinical Legal Education' Available at <https://www.saflii.org/za/journals/LDD/2021/17.pdf> (Accessed on 13/08/2026)

²⁰ Motsisi. M., 'Mediation & Ubuntu' Available at <https://www.mmatheomotsisi.com/mediation-ubuntu/#::~:txt=Ubuntu%20as%20the%20Primeval%20Model,promotes%20genuine%20trust%20and%20openness> (Accessed on 13/08/2026)

²¹ Kariuki. F., 'Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities.' Op Cit

²² Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

Despite the important role that culture has played in ensuring effective and appropriate justice systems and processes in Africa, this role has been heavily undermined as a result of introduction of Western-centric justice systems in the continent. For example, it has been correctly observed that one of the most important distinctions between the institutional settings of Western societies and African societies is that Western societies focus on the individual rather than the collective as the unit of social organization and public policy²³. As a result, Western cultures utilise confrontational approaches and conflict management characterized by adversarial techniques over non- adversarial techniques due to their focus on individuals' rights and interests²⁴. Due to colonialism, there has been introduction of Western-centric justice systems in Africa which focus on confrontational approaches that lead to retribution at the expense of restoration as envisaged under culturally appropriate justice in Africa²⁵. For example, it has been observed that due to its adversarial nature, litigation can strain relationships and create animosity between the litigating parties²⁶. Access to justice through courts is a combative process that is not structured to foster collaboration, harmony and reconciliation as envisaged under the African conception of justice²⁷. The use of Western-centric justice systems in Africa can therefore undermine culturally appropriate justice in Africa since courtroom battles often lead to retribution at the expense of restoration²⁸. In addition, it has been observed that litigation does not effectively address the root causes of conflicts creating the likelihood of conflicts reemerging in future while also damaging otherwise fruitful relationships²⁹.

In light of the foregoing concerns, there is need to give prominence to culturally appropriate justice in Africa in order to foster peace, harmony and cohesion.

3.0 Embracing Culturally Appropriate Justice in the African Context

There is need to recognise and embrace the role of culture in conflict management in Africa. In contrast to Western-centric justice systems which focus on retribution, culturally appropriate justice in Africa emphasises restoration. In particular, the African philosophy of *Ubuntu/Utu* has been part and parcel of conflict management and access to justice since time immemorial with focus being on creating consensus, facilitating reconciliation, fostering peace and harmony and

²³ Ogbaharya. D., 'Alternative Dispute Resolution (ADR) in Sub-Saharan Africa: The Role of Customary Systems of Conflict Resolution (CSCR).' Op Cit

²⁴ Kaushal. R., & Kwantes. C., 'The Role of Culture and Personality in Choice of Conflict Management Strategy.' Op Cit

²⁵ Ibid

²⁶ Williams. D., 'Using Alternative Dispute Resolution (ADR) to Settle Global Intellectual Property (IP) Disputes – Part 2 – The Advantages of ADR Over Litigation in Court' Available at <https://adric.ca/using-alternative-dispute-resolution-adr-to-settle-global-intellectual-property-ip-disputes-part-2-the-advantages-of-adr-over-litigation-in-court/> (Accessed on 13/08/2026)

²⁷ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

²⁸ Kaushal. R., & Kwantes. C., 'The Role of Culture and Personality in Choice of Conflict Management Strategy.' Op Cit

²⁹ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

promoting social cohesion³⁰. However, it has been observed that since the introduction of Western-centric justice systems in Africa, conflicts that were hitherto handled through traditional amicable settlements practices, with emphasis on reconciliation and the restoration of social harmony, are now being handled on the basis of punishment of the conflicting parties³¹.

In light of the foregoing, it is imperative to rejuvenate the African philosophy of justice by shifting from current justice systems which focus on retribution towards culturally appropriate justice systems which focus on restorative justice. It has been observed that in contrast to traditional models of justice which primarily focus on punishment and retribution, restorative justice takes a different approach and centers on addressing harm, fostering dialogue and promoting accountability³². Restorative justice focuses on truth, healing, harmony and reconciliation towards strengthening relationships and preventing similar harms and injustices from reoccurring in future³³. It has been argued that by fostering restorative justice, it is possible to promote tolerance and inclusiveness, uncover truth, encourage the peaceful expression and resolution of conflict, build respect for diversity and promote responsible community practices³⁴. Restorative justice is particularly important given the collectivistic nature of African societies where there is need to ensure peace, harmony, reconciliation and community well-being³⁵.

In order to shift from retribution to restoration, there is need to embrace culturally appropriate justice systems in Africa including negotiation, conciliation, mediation and traditional justice systems³⁶. These techniques have been utilized to promote restoration in Africa for many centuries due to their emphasis on dialogue, mutual agreement and cooperation thus reconciling the interests of parties and contributing to a more holistic understanding of justice³⁷. Appropriate Dispute Resolution (ADR) techniques including mediation, negotiation, conciliation and traditional justice systems provide a suitable platform for achieving restorative justice due to their focus on harmony, cooperation, dialogue and collaborative solutions³⁸. Consequently, there is need to put in place effective legal, policy and institutional frameworks in order to enhance the

³⁰ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

³¹ Adeyinka. A., & Lateef. B., 'Methods of Conflict Resolution in African Traditional Society' *An International Multidisciplinary Journal*, Ethiopia Vol. 8 (2).

³² The Role of Restorative Justice in Modern Criminal Justice Administration., Available at <https://www.park.edu/blog/the-role-of-restorative-justice-in-modern-criminal-justice-administration/> (Accessed on 14/08/2026)

³³ Maiese. M., & Burgess. H., 'Types of Justice' Available at https://www.beyondintractability.org/essay/types_of_justice (Accessed on 14/08/2026)

³⁴ United Nations Office on Drugs and Crime., 'Handbook on Restorative Justice Programmes' Available at https://www.unodc.org/documents/justice-and-prison-reform/20-01146_Handbook_on_Restorative_Justice_Programmes.pdf (Accessed on 14/08/2026)

³⁵ Adeyinka. A., & Lateef. B., 'Methods of Conflict Resolution in African Traditional Society' Op Cit

³⁶ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

³⁷ Ibid

³⁸ Ibid

uptake of ADR techniques towards fostering culturally appropriate justice in Africa³⁹. In addition, by linking culturally appropriate justice systems including traditional justice systems with formal justice systems, it is possible to promote a system of referral where by disputes filed in courts can be referred to amicable resolution processes which focus on restoration⁴⁰. It is also imperative to ensure that the use of culturally appropriate justice systems in Africa aligns with Constitutional and human right standards towards ensuring fairness, equity and inclusivity in conflict management and access to justice⁴¹.

4.0 Conclusion

It is imperative to (re)embrace culturally appropriate justice in Africa. In particular, by utilising ADR techniques including negotiation, mediation, conciliation and traditional justice systems, it is possible to uphold the African philosophy of *Ubuntu/Utu* by shifting the goal of conflict management from retribution to restoration for peace, harmony, true justice and development.

³⁹ Muigua. K., 'Effective Justice for Kenyans: Is ADR Really Alternative?' Available at <https://kmco.co.ke/wp-content/uploads/2018/08/Alternative-Dispute-Resolution-or-Appropriate-Dispute-Resolution.pdf> (Accessed on 14/08/2026)

⁴⁰ Judiciary of Kenya., 'Alternative Justice Systems Baseline Policy and Policy Framework.' Available at <https://judiciary.go.ke/download/alternative-justice-systems-baseline-policy-and-policy-framework/> (Accessed on 14/08/2026)

⁴¹ United Nations., 'Human Rights and Traditional Justice Systems in Africa' Available at <https://peacemaker.un.org/sites/default/files/document/files/2022/11/hrpub162hrandtraditionaljusticesystemsinafrica.pdf> (Accessed on 14/08/2026)

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Muigua. K., 'Effective Justice for Kenyans: Is ADR Really Alternative?' Available at <https://kmco.co.ke/wp-content/uploads/2018/08/Alternative-Dispute-Resolution-or-Appropriate-Dispute-Resolution.pdf>

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