

*Governance of Traditional Justice Systems in Africa: Legitimising Customary Appropriate Dispute Resolution
(ADR) Practices through Policy, Law, Constitutional and Human Rights Standards*

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Standards**

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Abstract

This paper discusses how traditional justice systems can be effectively and appropriately utilised in Africa. The paper observes that traditional justice systems are part and parcel of conflict management in Africa especially for indigenous and local communities. It argues that traditional justice systems provide an effective approach towards strengthening access to justice in Africa through customary Appropriate Dispute Resolution (ADR). The paper examines the key features and advantages of traditional justice systems in the African context. Despite being an appropriate forum for accessing justice through customary law and practices, the paper also observes that the current landscape of traditional justice systems in Africa faces several challenges. It discusses some of the key concerns with traditional justice systems in Africa. In light of underlying challenges, the paper suggests how traditional justice systems can be effectively harnessed in Africa by legitimising customary ADR through policy, law, constitutional and human rights standards.

1.0 Introduction

Traditional justice systems is a broad term that covers dispute resolution practices that are often embraced by indigenous and local communities in managing conflicts through institutions such as community paralegals, local authorities, and elders¹. Traditional justice systems have also been defined as community-based processes of conflict management and access to justice². In addition, it has been observed that traditional justice systems are informal processes of conflict management that are governed by the customary law of various communities³. This concept covers various techniques including Customary and Informal Justice Systems (CIJ) and Traditional Dispute Resolution Mechanisms (TDRMs)⁴.

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¹ Lee. S., 'Multiple Doors to Justice in Kenya: Engaging Alternative Justice Systems' Available at <https://cic.nyu.edu/wp-content/uploads/2023/11/Multiple-Doors-to-Justice-in-Kenya-2023.pdf> (Accessed on 05/08/2026)

² Muigua. K., 'Traditional Dispute Resolution Mechanisms under Article 159 of the Constitution of Kenya, 2010' Available at <https://kmco.co.ke/wp-content/uploads/2018/08/Paper-on-Article-159-Traditional-Dispute-Resolution-Mechanisms-FINAL.pdf> (Accessed on 05/08/2026)

³ Kariuki. F., 'Traditional Dispute Resolution Mechanisms in the Administration of Justice in Kenya' Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3646995 (Accessed on 05/08/2026)

⁴ Lee. S., 'Multiple Doors to Justice in Kenya: Engaging Alternative Justice Systems' Op Cit

Traditional justice systems provide an appropriate and effective pathway towards accessing justice. It has been observed that these processes predate conventional court adjudication of disputes all over the world⁵. Traditional justice systems provide a customary, informal and community-based approach that can strengthen access to justice especially for indigenous and local communities who face hurdles in accessing justice through formal court processes⁶. It has been correctly observed that these processes resonate well with indigenous and local populations and are therefore more effective in providing a sense of justice and restoring community relationships⁷. In addition, traditional justice systems are well suited to local justice needs and priorities and thus allow for local contexts to be incorporated into justice processes for appropriate, effective and sustainable outcomes⁸.

Despite their role in fostering access to justice especially for indigenous and local communities, these processes are largely uncodified and underutilized⁹. In addition, it has been observed that without adequate safeguards, traditional justice systems can result in human right violations¹⁰. It is therefore imperative to legitimise and ensure that the use of traditional justice systems aligns with constitutional and human rights standards towards justice, equity and development for vulnerable and marginalized populations.

This paper discusses how traditional justice systems can be effectively and appropriately utilised in Africa. The paper observes that traditional justice systems are part and parcel of conflict management in Africa especially for indigenous and local communities. It argues that traditional justice systems provide an effective approach towards strengthening access to justice in Africa through customary Appropriate Dispute Resolution (ADR). The paper examines the key features and advantages of traditional justice systems in the African context. Despite being an appropriate forum for accessing justice through customary law and practices, the paper also observes that the current landscape of traditional justice systems in Africa faces several challenges. It discusses some of the key concerns with traditional justice systems in Africa. In light of underlying challenges, the paper suggests how traditional justice systems can be effectively harnessed in Africa by legitimising customary ADR through policy, law, constitutional and human rights standards.

⁵ Republic of Kenya., Office of the Attorney-General and Department of Justice 'Sessional Paper No. 4 of 2024 on The National Alternative Dispute Resolution Policy'

⁶ Traditional Justice Systems., Available at <https://gsdrc.org/topic-guides/transitional-justice/concepts-and-mechanisms/mechanisms/traditional-justice-systems/> (Accessed on 05/08/2026)

⁷ Ibid

⁸ Ibid

⁹ 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 05/08/2026)

¹⁰ Ibid

2.0 Traditional Justice Systems and Access to Justice in Africa: Promises and Pitfalls

Traditional justice systems have been utilised in conflict management in Africa since the dawn of humanity. It has been observed that before colonial occupation and rule, communities in Africa had already developed their own systems and mechanisms of promoting justice¹¹. These systems are referred to as customary or traditional justice systems¹². For many centuries customary, traditional and informal justice mechanisms have been at the center of conflict management in Africa as communities thrived and its constituents expressed satisfaction at how justice was dispensed¹³.

In Africa, traditional justice systems have long-standing cultural and historical foundations, and frequently predate colonialism¹⁴. Traditional justice systems in Africa have been identified as community-level dispute resolution mechanisms with non-State origins, even if such processes have subsequently been recognized and regulated by the State¹⁵. It has been observed that in the African context, traditional justice systems operate in an environment where traditional authorities, including elders, are recognized, formally or informally, as having a leadership role in a community and in relationship to a given territory¹⁶.

Traditional justice systems in Africa are anchored in the customary laws of their respective communities and as a result, they reflect African cultural values, norms, principles and philosophies¹⁷. In particular, it has been observed that these processes emphasize cooperation, reconciliation, communitarism, strong group coherence, social obligations, consensus-based decision-making, social conformity, and strong social sanctions in accordance with the spirit of conflict management inherent in African communities¹⁸. Across all communities in Africa, conflicts are considered an undesirable phenomenon since they can affect the social fabric that holds the community together¹⁹. As a result, there is need for expeditious and efficient management of conflicts and for preventing their escalation into violence, a situation which could threaten the social fabric²⁰. African communities therefore developed and embraced conflict

¹¹ 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 05/08/2026)

¹² Ibid

¹³ The International Commission of Jurists., 'Alternative Justice System Solution To Backlog Of Cases' Available at <https://icj-kenya.org/news/alternative-justice-system-solution-to-backlog-of-cases/> (Accessed on 05/08/2026)

¹⁴ United Nations., 'Human Rights and Traditional Justice Systems in Africa' Op Cit

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Kariuki. F., 'African Traditional Justice Systems' Available at <https://kmco.co.ke/wp-content/uploads/2018/08/African-Traditional-Justice-Systems.pdf> (Accessed on 05/08/2026)

¹⁸ Ibid

¹⁹ Awoniyi. S., 'African Cultural Values: The Past, Present and Future' *Journal of Sustainable Development in Africa*, Volume 17, No.1, 2015

²⁰ Ibid

management strategies that were aimed towards effectively dealing with conflicts in order to ensure peaceful co-existence within the community²¹. It has been observed that African communities have since time immemorial adhered to communal values such as peace, harmony, togetherness, solidarity and community cohesion over individual interests as envisaged under the African philosophy of *Ubuntu/Utu*²². These values have been incorporated in conflict management with focus being on peace, harmony and reconciliation²³.

Traditional justice systems are therefore part of the cultural heritage of the people of Africa. It has been observed that throughout history, traditional justice systems in Africa have taken the form of informal and customary ADR techniques such as negotiation, mediation, reconciliation and arbitration among other techniques which were administered by institutions such as the council of elders²⁴. These techniques fit comfortably within traditional concepts of African justice, particularly its core value of reconciliation, peace and harmony²⁵. It has been observed that traditional justice systems are able to restore relationships and foster peace and social cohesion in African societies²⁶. Consequently, it has been pointed out that traditional justice systems have a huge potential for enhancing access to justice (particularly amongst groups that have been excluded from the formal justice system) in Africa, strengthen the rule of law and ensure peace and development²⁷. In most contexts, traditional justice systems are often more accessible and affordable than formal justice systems therefore making them an appropriate tool in enhancing access to justice²⁸. Since traditional justice systems are closely tied to the communities and are mostly non-institutionalized, these processes are cost-effective and more affordable when compared to formal systems²⁹.

From the foregoing, it is evident that traditional justice systems provide numerous advantages that can strengthen access to justice through customary ADR in Africa. In particular, these techniques are highly accepted among indigenous peoples and local communities since they are usually conducted in local languages, are easily accessible and affordable thus bringing justice closer to the people, they focus on restorative justice at the expense of retribution, and are

²¹ 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-successeschallenges-and-opportunities-1.pdf> (Accessed on 05/08/2026)

²² Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

²³ Ibid

²⁴ Kariuki. F., 'Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities.' Op Cit

²⁵ Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

²⁶ Ibid

²⁷ Kariuki. F., 'African Traditional Justice Systems' Op Cit

²⁸ Judiciary of Kenya., 'Promoting Alternative Justice Systems (AJS)' Available at <https://judiciary.go.ke/promoting-alternative-justice-systems-ajs/> (Accessed on 05/08/2026)

²⁹ Judiciary of Kenya., 'Alternative Justice Systems Baseline Policy and Policy Framework.' Op Cit

conducted by respected institutions including the council of elders³⁰. Further, traditional justice systems are an appropriate forum for building and sustaining peace since they not only focus on resolving disputes but also focus on dispute prevention and ensuring minimal or non-recurrence of disputes in future³¹. The United Nations observes that the role of community leaders as decision makers, public participation by community members and proceedings that aim at reconciliation and maintaining harmony are among the characteristics that set traditional justice systems apart from formal courts³².

Their benefits notwithstanding, the current landscape of traditional justice systems in Africa raises several concerns. For example, it has been observed that these processes usually demonstrate ethnic, religious, generational and gender hierarchies and divisions at the local level, which can limit their effectiveness and perpetuate inequalities and injustices³³. Traditional justice systems often reflect patriarchal values and discriminate against women, children, and other marginalized groups a situation that can lead to human rights abuses³⁴. In addition, it has been argued that when traditional justice systems are institutionalised and implemented in a top-down fashion, they may no longer resonate with local populations undermining effective and appropriate access to justice³⁵. Addressing these challenges is key towards achieving effective governance of traditional justice systems in Africa for enhanced access to justice through customary ADR.

3.0 Towards Effective Governance of Traditional Justice Systems in Africa

Traditional justice systems provide an appropriate and effective approach towards strengthening access to justice in Africa. If well harnessed, these processes can provide local and customary-based justice solutions that uphold the culture, values and philosophies of the people of Africa. However, in light of underlying challenges, it is imperative to embrace appropriate governance in order effectively utilise traditional justice systems for enhanced access to justice.

In particular, legitimising traditional justice systems in Africa through policy, law, constitutional and human rights standards is a key approach towards ensuring that these processes are well governed for justice and development. For example, it has been observed that putting in place appropriate legal, policy, institutional and administrative measures will ensure that traditional justice systems find their rightful place in conventional judicial systems in Africa and that the same are meaningfully and actively utilized in facilitating access to justice especially for the

³⁰ Kariuki. F., 'Traditional Dispute Resolution Mechanisms in the Administration of Justice in Kenya' Op Cit

³¹ Judiciary of Kenya., 'Promoting Alternative Justice Systems (AJS)' Op Cit

³² United Nations., 'Human Rights and Traditional Justice Systems in Africa' Op Cit

³³ Traditional Justice Systems., Op Cit

³⁴ Lee. S., 'Multiple Doors to Justice in Kenya: Engaging Alternative Justice Systems' Op Cit

³⁵ Traditional Justice Systems., Op Cit

marginalized, poor and underprivileged in the society³⁶. It is therefore necessary to ensure constitutional recognition of traditional justice systems in Africa in order to encourage and support their use in the administration of justice. In addition, it has been observed that effective laws and policies can support efforts towards mainstreaming traditional justice systems in Africa including through the formal recognition these techniques and identification of the kinds of cases that can be handled through traditional justice systems; strengthening the process for selection, election, appointment and removal of traditional justice practitioners; development of procedures and customary law jurisprudence; facilitation of effective intermediary interventions; and strengthened and sustainable resource allocation and mobilization towards bolstering traditional justice systems³⁷.

In addition, there is need to ensure that the use of traditional justice systems in Africa aligns with human rights standards. In particular, there is need for appropriate governance in order to ensure that the use of traditional justice systems adheres to procedural fairness including through upholding the right to a fair hearing and the right to appeal in line with constitutional and human rights thresholds of access to justice³⁸. There have been calls to ensure that the various decision-makers under traditional justice systems have legal training on human rights³⁹. Through this this, it is possible to uphold human rights including through embracing gender equality, ensuring each party is given the right to a fair hearing including the possibility of appeal and ensuring that customary law or practices that are incompatible with human rights are no longer applied in traditional justice systems⁴⁰.

Through the foregoing initiatives, it is possible to effectively legitimise customary ADR in Africa through policy, law, constitutional and human rights standards.

4.0 Conclusion

With many countries in Africa struggling to establish effective, appropriate, timely and affordable justice systems, traditional justice systems provide a viable pathway towards strengthening the use of customary ADR for justice and development. However, in light of current concerns, it is vital to ensure traditional justice systems in Africa are effectively and adequately governed. Achieving this goal involves legitimising customary ADR practices in Africa through policy, law, constitutional and human rights standards.

³⁶ Muigua. K., 'Legitimising Alternative Dispute Resolution in Kenya: Towards a Policy and Legal Framework' Available at <https://kmco.co.ke/wp-content/uploads/2018/08/LEGITIMISING-ALTERNATIVE-DISPUTE-RESOLUTION-MECHANISMS-IN-KENYA.pdf> (Accessed on 05/08/2026)

³⁷ Judiciary of Kenya., 'Alternative Justice Systems Baseline Policy and Policy Framework.' Op Cit

³⁸ Ibid

³⁹ United Nations., 'Human Rights and Traditional Justice Systems in Africa' Op Cit

⁴⁰ Ibid

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