



Exploring Customary Law Conflict Resolution Strategies For Democratic Consolidation In Nigeria

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ABSTRACT

Social divisions, judicial officers' insufficiency, poor governance and religion, ethnicity, etc. impede Nigeria's efforts to consolidate democracy. The goal of democratic consolidation is to ensure the continuous representation of citizens' interests, despite challenges, thereby creating a robust and enduring democratic system. Customary law conflict resolution techniques (CLCRT) have proven successful in settling conflicts and fostering social cohesion at the local level. This study investigates how democratic governance and social cohesiveness could be strengthened by the political will of those in governance by applying customary law dispute settlement techniques. Using the doctrinal methodology and comparative approach, combining case studies, we examine the effectiveness of customary law mechanisms in resolving disputes, strengthening and stabilising the newly established democratic system. Our results demonstrate how customary law can be used with official justice systems to remedy their shortcomings and promote inclusive government. We contend inter alia that incorporating tactics for resolving conflicts based on customary law into Nigeria's democratic framework can strengthen its legitimacy, encourage social cohesion, and aid in peace building; customary law courts should also be established and recognised as part of the formal justice system. This study adds to the expanding corpus of research on legal pluralism and democratic consolidation by providing valuable suggestions for practitioners and policymakers who aim to fortify democracy in varied and polarised countries.

Keywords: Customary law, Democratic consolidation, Conflict resolution strategies, Peace building

1.0 Introduction

Before the advent of colonialism, there were principles, norms, rules, agencies, and institutions of law regulating the ways of life of the diverse geo-cultural groups that made up what is now known as Nigeria. The nation has always had a tapestry of indigenous laws governing the various aspects of the lives of its people.¹ These laws, known as customary laws², which have often been passed through generations, have played a significant role in conflict resolution. While the British Colonialists did not abolish the customs and practices of Nigerians, they introduced specific standards or doctrines into the nation upon which judges could assess all customs and traditions of native Nigeria before being applied as law.³ The introduction of English law into Nigeria gradually extended to the rest of the Country and in no time became applicable to the Natives of Nigeria, alongside customary law, through statutes and legal mechanisms.⁴ The contemporaneous application

¹ P.A., Onamade. *Customary Law- Jus Dicere*. (Ipara-Remo: Philade Co. Ltd., 2024) 8-10.

² A.D. Badaiki, *Development of Customary Law*. (Lagos: Tiken Publishers, 1997) 10.

³ J.E. Moses, and M.S. Sheka. An Evaluation of the Concept of Enforceability of Customary Law and its Effect in Nigerian Administration of Justice. (2021) *Madona University Nigeria Faculty of Law, Law Journal* (4): 98-115

⁴ English law initially applied to British nationals while customary law continued to apply to indigenous legal order of Nigerians.

of customary law and the received English law, amongst other sources of law in Nigeria, is systematically harmonised by legislation and judicial interpretation.⁵

Over time, customary law has deeply adapted to the Nigerian society's changing political, social, and economic circumstances as it is deeply ingrained in the nation's cultural fabric. It has played a considerable role in conflict resolution, offering a unique set of techniques for conflict resolution, hence contributing significantly to democratic consolidation. This set of strategies is more often than not reliant on community-based approaches, mediation, arbitration, and restorative justice, which can be effectual in addressing the complex political and social challenges Nigeria is confronted with. Conflict takes various forms and dimensions in Nigerian societies. They are in the magnitude of rage, rift, misunderstanding, family and market brawls, wars, public insurrections, assaults, chieftaincy, and land and boundary disputes. Conflicts are not limited to any community in the nation. Due to acculturation and the high pace of globalisation in Nigeria, Customary Law Conflict Resolution Techniques (CLCRT) remained more entrenched in the Nigerian legal system.⁶

Democracy, which involves the participation of the people in decision-making, open and fair competition within fixed and generally accepted 'rules of the game',⁷ has a normative dimension that includes acceptance of majority rule, respect for the rule of law, protection of individual and minority rights, and safeguarding the interests of the disadvantaged group within the community.⁸ Democratic consolidation, conversely, has been defined as the challenge of securing new democracies, extending their life expectancy beyond the short term, immunising them against the threat of authoritarian retrogression or 'building a dam against reverse waves'.⁹ It is a recognisable juncture in the process of change from an autocratic to a democratic system that is vital for setting up a stable, institutional and sustainable democracy.¹⁰ It is the approval by all partisan actors that democratic processes order government restitution.¹¹

Understanding legal pluralism is essential for any legal or policy intervention, including but not limited to state building. Interventions will likely be ineffective without understanding legal pluralism's dynamics in a given context.¹² Legal pluralism can help form a vital foundation of state legitimacy. As the relationship between state and non-state sectors is inherently fluid, the institutions and initiatives present can help or hinder the development of more constructive relationships between State and non-state actors.¹³ Examining techniques for resolving disputes based on customary law is crucial when considering Nigeria's democratic consolidation. The process by which a new democracy develops and stabilises, averting a return to authoritarian rule, is called democratic consolidation. Long-term peace and prosperity in Nigeria, which has seen periods of military rule and political instability, depend on the growth of democratic institutions and procedures. By fostering justice and reconciliation at the local level, customary law, as an alternative dispute resolution (ADR) method, offers a community-based framework that can support formal legal systems and advance democratic government.

This paper is divided into six parts. It consists of the abstract, introduction, discourse on Customary Law Conflict Resolution Techniques, democratic consolidation and its challenges, integration of conflict resolution techniques into democratic consolidation, conclusion and recommendations.

2.0 Challenges of Democratic Consolidation in Nigeria

The impact of Customary law conflict resolution strategies for democratic consolidation in Nigeria cannot be overemphasised. Conflicts as attendant characteristics of human social interactions cannot be eradicated; however, their proper management remains essential for the sustainability of the democratic processes in Nigeria. Interestingly, issues of democratic consolidation have given rise to interpretations amongst scholars and political scientists. According to Valenzuela, as stated in Okeke,¹⁴ establishing a sound and formidable democratic system involves a lot of courage ranging from a robust electoral system, reformed or a creation of new political parties devoid of ethnicity, a standalone judicial system; strict adherence to rule of law, and a commitment to the protection and promotion of human rights, either created or reviewed at the time of the transition process. As it may, democratic consolidation emerges as a post-transitional regime associated with

⁵ A.D. Badaiki (1997) *op.cit.* 10

⁶ F. Salami, and G. Kpae. Examination of Traditional Nigerian Conflict Resolution Mechanism and Modern Legal System of Conflict Resolution. (2023) *Journal of Advance Research in Social Science & Humanities*. 9.8:2-34

⁷ B. Usman, R. M., Joshua and & T. Abraham. Consolidating Nigerian Democracy in the fourth republic: The Role of the Judiciary. (2021) *ABU Journal of Public Administration* Vol. 9 .1:1-14.

⁸ B. Usman, R. M., Joshua and & T. Abraham. (2021). *op.cit.*

⁹ U.J., Otaigbe, Institutions and the Challenge of Democratic Consolidation in Nigeria's Fourth Republic. (2019) *Canadian Social Science* Vol. 15, No. 1.

¹⁰ A. Ademola, A., Threats to good governance for sustainable democracy: The continuing struggle against corruption in Nigeria. (2011) *Journal of Research on Peace, Gender and Development* 1(11).307-314.

¹¹ B. Usman, R. M., Joshua and & T. Abraham. (2021). *op.cit.*...

¹² G. Swenson. Legal Pluralism in Theory and Practice. *International Studies Review* (2018) 0, 1–25.

¹³ G. Swenson. (2018). *ibid.*

¹⁴ R. Okeke, "Democratic Consolidation in Nigeria: Progress and Challenges," (2015)5. *Arabian Journal of Business and Management Review*, 5: 21-34.

institutional stability and a peaceful process akin to developmental strides.¹⁵ It must be emphasised that an understanding of democratic consolidation underscores the importance of institutionalising and entrenching democratic norms and practices in a post-transition period.

According to Diamond, democratic consolidation is regarded as a means of legitimisation, wherein every participant engaged in the political process tends to appreciate the whole essence of a democratic system, which appears to be a more reliable, sustainable and beneficial system for a virile society, better than any other form of government.¹⁶ While other scholars conceptualised democratic consolidation as an end-state or attainment, Diamond's perspective suggests that it exceeds beyond a mere actualisation. In other words, democratic consolidation is often an integral component of all democratic systems, composed of dynamic and formidable processes. In Africa, the emergence of a middle-class system contributed immensely to the advancement of democratic consolidation, as is found in Nigeria today. Having demonstrated several benefits of democratic consolidation vis-a-vis different approaches, it must be emphasised that this process is being confronted with numerous challenges and setbacks. These setbacks are not to be seen as insurmountable challenges, but as a means of planning and achieving an enduring democratic structure. Significantly, despite the gains of a sustainable democratic process in Nigeria, the facts remained that there are potential challenges and threats associated with its consolidatory processes. Thus, it is clear that if democratic consolidation is to be achieved in Nigeria, the underlisted challenges demand urgent attention.

2.1 Ethnic Diversity and Political Instability

As one of the challenges to democratic consolidation in Nigeria, ethnic diversity and political instability have, in recent years, created political disharmony amongst the electorate who are of different ethnic backgrounds. However, this intricate ethnic complexity has precipitated intense and occasionally catastrophic political conflicts. With over two hundred ethnic groups, Nigeria's multi-ethnic nature is daunting, featuring numerous small and politically inconsequential groups alongside three dominant ethnic blocs: the Hausa-Fulani (a confluence of two culturally and politically integrated peoples), the Yoruba, and the Igbo. These latter groups have historically wielded significant influence in Nigeria's political sphere. The Country's centralised ethnic structure presents formidable obstacles to ethnic harmony, primarily due to the physical and socio-cultural separation of ethnic groups. The Hausa-Fulani predominate in the North, Igbo in the East, while Yoruba in the West, with each region comprising substantial minority groups that are nursing fears of marginalisation and resentments towards the major tribes.

Furthermore, the Northern Muslim Emirates have long been a source of tension, fueling intractable conflicts amongst ethnic groups. Each ethnicity in Nigeria possesses distinct faiths, beliefs, interests, cultures, languages, and aspirations, which significantly impact their economic sustenance. In light of the above factors, it may rightly be said that these factors hinder the creation of a uniform identity, thereby exacerbating the challenges of achieving a genuine democratic process. As if these issues are not enough, Nigeria currently lacks essential democratic values, including robust civil and human rights systems, unfettered freedom of speech and expression, comprehensive social security, and equitable justice.¹⁷ The absence of these fundamental principles undermines the development of a healthy democracy, perpetuating a cycle of ethnic conflict and political instability. More so, the fear of democratic destabilisation due to cultural or ethnic pluralism cannot be avoided entirely in a pluralistic society like Nigeria, as democracy implies an assemblage of differences that need to be united, conciliated, or advanced into phases of higher syntheses.¹⁸ While this remained a challenge and a complex area in democratic structure and consolidation in Nigeria, the paper suggests a need to strengthen the existing regulatory regime.

2.2 Gender Inequality

Gender inequality is another significant challenge to democratic consolidation in Nigeria, which arose from gender differences. According to Okeke¹⁹ and Tripp,²⁰ women's participation in the political process in Nigeria is inadequate and has led to gender imbalance in the allocation of political positions. This phenomenon is a result of the societal belief that women's central role lies within the arena of domestic activities, a clear departure from the norms construed as retrogressive and barbaric.²¹ Although women have had opportunities to participate in presidential elections, their agency has been curtailed by patriarchal constraints. For instance, they have been required to secure the approval of their husbands to participate in the electoral process, and

¹⁵ Ibid

¹⁶ L. Diamond, (1999), *Developing Democracy: Towards Consolidation*, (Baltimore: USA, 1999).

¹⁷ M. Kwasu, "The Challenges of Democratic Consolidation in Nigeria's Fourth Republic," (2013) 9 *European Scientific Journal*, 8: 1857-7881.

¹⁸ C. Ake, (1990) "The Case for Democracy in the Carter Centre, African Governance in the 1990s: Objectives, Resources and Constraints, Atlanta": The Carter Centre of Emory University, 1990.

¹⁹ Ibid, P. 1.

²⁰ A. Tripp, (1998) "Expanding Civil Society: Women and Political Space in Contemporary Uganda. Civil Society and Democracy in Africa: Critical Perspectives", 1998: 84-106.

²¹ Ibid.

even then, their voting choices are controlled by their husbands.²² This lack of independence in taking decisions on matters that border on political participation contributed to the relegation of women to mere involvement and not giving any opportunity to make inputs where necessary. It must be emphasised that the limited participation of women in major political parties in Nigeria demonstrates their exclusion. However, the 1991 National Conference protests, where women spoke out against their underrepresentation, had only one female participant. The paper revealed that women's participation in the democratic processes in Nigeria is abysmal and not encouraging compared to what is obtained in other jurisdictions.²³ Furthermore, Karl and Rashmi have emphasised that excluding women from participation in public spheres undermines democratic consolidation, which highlights the need for gender inclusivity in the democratic processes in Nigeria.²⁴ Similarly, it is revealed that unhealthy competitions and manoeuvres for power and control amongst the male elites have been a significant challenge.²⁵

2.3 Poverty

The pervasive challenges of poverty further complicate Nigeria's democratic system. As Abisoye and Adesiyan rightly observed, Nigeria's economic fortunes have dramatically declined, transforming the erstwhile "giant of Africa" into an economically fragile State with a substantial proportion of its population languishing in poverty.²⁶ Remarkably, Nigeria's economic regression has been so pronounced that it has plummeted from being one of the world's fifty richest Countries in the 1970s to becoming one of the twenty-five poorest Countries, with a staggering 70% of its population characterised as poor, and over half living in absolute poverty.²⁷ Paradoxically, Nigeria's status as a significant oil exporter belies its dire economic circumstances, with the Country boasting the third-largest number of poor people globally, surpassed only by India and China. The Country's poor economic growth, averaging a mere 2.4% annual GDP growth between 1990 and 2000, lags behind comparable economies like Ghana (4.3%) and Egypt (4.6%).²⁸ Furthermore, approximately 70% of Nigeria's population subsists on less than \$1 daily, while a staggering 90.8% survive on less than \$2 daily, showing the level of poverty in Nigeria. Additionally, the wealth disparities in Nigeria have unreasonably increased, with 0.01% of the population controlling a staggering 95% of the Country's resources.²⁹

Despite the existence of positive States' obligations to prevent poverty and hunger under democratic institutions, it has been observed that unemployment, along with under-employment, has become a pervasive feature of African societies, exacerbating the continent's socio-economic woes. This suggests that the spiralling inflation has confronted Nigeria and most African Countries, rendering wages inadequate for sustenance, let alone supporting a family, for those fortunate enough to secure employment.³⁰ Notably, Nigeria today is recorded as a Country with the lowest income globally, underscoring the depth of economic hardship. Ngara et al. rightly identify poverty as a significant impediment to democratic consolidation in Nigeria, as it erodes the full participation of all and sundry in democratic life and diminishes popular support for democracy.³¹ Furthermore, since Nigeria transitioned to multi-party democracy in 1999, the elite have dominated the political landscape, while most of the population has been excluded from the political process. This phenomenon can be attributed to concerns that widespread poverty may undermine democratic consolidation, although the precise mechanisms by which poverty subverts democracy remain unclear.³² This knowledge gap underscores the need for further research into the complex relationships between poverty, economic inequality, and democratic governance in Nigeria.

²² M. Ayeni and A. Ajibogun, "Gender Issues and Democracy: The Nigeria Experience," (2013)2 *International Journal of Academic Research in Progressive Education and Development*, 1: 117-127.

²³ Ibid.

²⁴ Z. Radhy, "Application of Multiply Regression Linear Model and New Technology Method in Estimating Learning and Education of Students," (2019)14 *International Electronic Journal of Mathematics Education*, 1 : 87-90.

²⁵ O. Obasanjo, Political Thuggery and Violence in Nigeria: The Bane of Women Participation in Politics, 2002. Available at: <<https://www.articlede.bate.com/political-thuggery-and-violence-in-nigeria>> Accessed August 20, 2024

²⁶ A. Abisoye, and E. Adesiyan, "Corruption and Leadership Challenges in a Democracy," ()3 *International Journal of Behavioural Social Movement Science*, 1: 9-15.

²⁷ C. Ngara et al. "Poverty, Inequality and the Challenges of Democratic Consolidation in Nigeria`s Fourth Republic," () 2 *Journal of Good Governance and Sustainable Development in Africa*, 1: 48-60.

²⁸ S. Liang, "A Comparison of American-born Chinese and Taiwanese College Students in Approaches to Studying," (2018)6 *Humanities & Social Sciences Review*, 2: 1-9.

²⁹ Ibid at note 12.

³⁰ K. Prah, (1996). *The Crisis of Neo-colonialism in Africa and the Contemporary Democratic Challenge*, (Kenya: Nairobi Peace Initiative, 1996), 7-22.

³¹ Ibid at note 13.

³² Ibid.

2.4 Corrupt Practices

Endemic corruption serves as a formidable obstacle to democratic consolidation in Nigeria. The paper revealed that corrupt practices hinder the growth and development of any nation in terms of attaining stable and flourishing democratic processes.³³ Research has shown that a whopping amount of \$400 billion was lost in oil resources alone due to corrupt practices, underscoring the extent of the problems.³⁴ However, this phenomenon is not merely a recent development. According to Usman, corrupt practices during the Babangida regime reached an alarming level, reversing the gains in earlier attempts to combat it.³⁵ This systemic corruption crippled the government's capacity to meet basic needs such as salaries for teachers and civil servants, provision of essential medicines in hospitals, and maintenance of schools. The resulting social unrest and strikes further exacerbated the challenges faced by the nation.³⁶ The tentacles of corruption extend through all strata of Nigerian society. From the notorious "Nigerian prince" email scams promising vast fortunes in exchange for upfront fees, to the routine extortion of drivers by police officers at seemingly endless checkpoints, corruption has, in some instances, become the unfortunate norm.

Furthermore, the very foundation of democratic processes – elections – is not immune to this pervasive corruption. Vote-buying by candidates erodes public trust and distorts the democratic process by elevating those with financial resources over those with genuine leadership qualities. Additionally, practices like prebendalism, a system of clientelistic patronage, further undermine democratic governance in the Country.³⁷ By diverting resources from critical social services and infrastructure development, corruption weakens the State's capacity to deliver on its core responsibilities to its citizens. This resource diversion fosters an environment of public disillusionment, cynicism towards democratic processes, and a potential breeding ground for anti-democratic movements.³⁸

2.5 Political Rivalry

Political rivalry is as old as the democratic process in Nigeria. Further, it can potentially reinforce and escalate bickering and hate speech among political parties. Political observers might argue that reducing the space for intolerant speech in the democratic processes can minimise political bickering and hate speech. From time immemorial, it is clear that crisis between rival political parties, notably the dominant National Party of Nigeria (NPN) with strongholds in the Yoruba States, and the coalescing opposition, particularly the radical Peoples Redemption Party (PRP) based in the Emirate North, has hindered democratic development.³⁹ This conflict has instead yielded unanticipated consequences, including the assassination of PRP Governor Mohammed Abubakar Rimi's political adviser in 1981. Moreover, this antagonism marked the inception of a novel confrontation between disparate political forces and within themselves, with a disturbing escalation of violence.

Notably, during the initial two years of the Second Republic, preceding the 1983 election campaign, the repercussions of recurrent clashes between rival politicians', parties', and party factions' thugs were alarming: over 130 individuals were killed or wounded, 376 were arrested, and numerous others were forced into hiding. This surge in violence underscores the intensifying political tensions and the erosion of democratic norms, portending a tumultuous future for Nigeria's democratic experiment. As the 1983 elections drew near, Nigeria's political landscape was beset by violent clashes between opposition parties and among their leaders, underscoring the intensifying rivalries and factionalism. The resultant political violence prompted temporary bans on public gatherings and assemblies, as the authorities struggled to maintain order.

3.0 Conceptual Framework

The concepts "legal Pluralism, Conflict and Customary Law", which are closely knit to this study, will be clarified in this section.

3.1 Legal pluralism

Legal pluralism denotes the existence of multiple sources of law within a geographical area.⁴⁰ It produces a hybrid legal environment where state, local and non-state actors are linked and the lines between them are

³³ Ibid at note 15.

³⁴ Ibid

³⁵ M. Usman, "Corruption in Nigeria: A Challenge to Sustainable Development in the Fourth Republic," (2013)9 *European Scientific Journal*, 4: 118-137.

³⁶ Ibid.

³⁷ A. Fatemina, (2014) *Investigating the Challenges and Barriers of Convergence Between Iran and Republic of Azerbaijan*, Noormags Iran, 2014.

³⁸ H. Zare and A. Shekarchizade, "The Application of Tichy's Model in Iranian Public Universities," (2014)1 *UCT Journal of Management and Accounting Studies*, 8-13.

³⁹ Ibid at note 3.

⁴⁰ GSDRC. *Legal Pluralism*. (2016) Accessed September 1, 2024 <https://gsdrc.org/topic-guides/safety-security-and-justice/themes/legal-pluralism/>

blurred. It is prevalent where more than one legal system operates within a country.⁴¹ Legal pluralism has vast policy and governance implications. In developing countries, for instance, non-state justice systems often handle most disputes and retain substantial autonomy and authority.⁴² Legal pluralism, whereby "two or more legal systems coexist in the same social field", is the dominant feature of most legal orders worldwide.⁴³ The role of legal pluralism is particularly vital in conflict and post conflict settings, as they tend to have weak state institutions and contested governing authority.⁴⁴ A robust legal pluralism challenges the State's claim to a monopoly on the legitimate resolution of legal disputes and the ideal of uniform application of the law. This process leads to a sustained struggle between state and non-state justice actors for legitimacy, resources, and authority.

3.2 Conflict

Conflict is as old as humanity and has become a salient feature of society. As a universally evident social phenomenon which is related to any form of interaction among people for a common purpose, it denotes the struggles, disputes, disagreements, fights, wars, quarrels, frustrations and structural imperfections existing within, between and among individuals and groups in any given society resulting from human interaction due to conflict is on the incompatibility of goals and arises from opposing behaviours.⁴⁵ Simply put, conflict is the clash of individual interests. It is a significant problem in any society as it remains an inevitable factor in human existence since communities, social groups, and societies are structured and organised to achieve the goals set by the organs and members of society.⁴⁶

3.3 Customary Law

Customary law is geographically and tribally sensitive.⁴⁷ With over 250 ethnic groups, the different regions of Nigeria are still under different customary law systems, which may overlap in certain specific matters.⁴⁸ Therefore, in a country that, to a non-negligible extent, is still dominated by traditional standards, the various indigenous laws and customs continue to play a vital role in the Nigerian legal system. Including customary law as one of the sources of laws in Nigeria lends credence to its importance.⁴⁹ Customary law has many definitions based on the writer's interests, perspective, and approaches to conceptualising the term. According to Black's Law Dictionary, it is a law consisting of customs accepted as legal requirements or obligatory rules of conduct; practices and beliefs are considered vital and form an intrinsic part of a social and economic system treated as if they were laws.⁵⁰ It is a body of customs accepted by community members as binding upon them.⁵¹ The Supreme Court in *Kharzaidan v. Fatima Khallili Mohssen*⁵² defines it as any system of law not being the common law enacted by any competent legislature in Nigeria, but which is enforceable and binding within Nigeria as between the parties subject to its sway. It is a mirror of accepted usage among a given people.⁵³ Similarly, in *Bilewu Oyewumi v. Amos Owoade Oginesa*,⁵⁴ the Court of Appeal gave a more encompassing definition of customary law: "Customary law is the organic or living law of the indigenous people of Nigeria, regulating their lives and transactions. It is organic in that it is not static; it is regulatory in that it controls the lives and transactions of the community subject to it. It is said by popular voice that custom is the mirror of the culture of the people. I would say customary law further impacts justice in the lives of those subject to it".⁵⁵

⁴¹ O. Lewis. Legal Pluralism and Land Ownership in Nigeria: A tale of two unworkable Systems. (2023) Accessed September 1, 2024. <https://ssrn.com/abstract=4335865>

⁴² G. Swenson. (2018). *op.cit.*

⁴³ S.E., Merry, Sally Engle. "Legal Pluralism." (1988) *Law & Society Review* 22 (5): 869–96.

⁴⁴ J.D., Fearon, D., James and D. Laitin. "Neo trusteeship and the Problem of Weak States." (2004) *International Security* 28 (4): 5–43

⁴⁵ F.A., Ezenwoko. & J.I., Osagie. (2014) *Conflict and conflict resolution in pre-colonial Igbo society of Nigeria*. (2014)

Journal of Studies in Social Sciences. 9(1): 135–158; A.A., Abdulsalam, I.N.Olokooba, P., Okafor, & A.C., Adika, Roles of Traditional Rulers in Conflict Resolution for Sustainable Democracy in Nigeria. (2020) *Nigerian Journal of Social Studies*. XXIII.1: 51–62.

⁴⁶ A. Itumo & H., Nwobashi, H. Understanding the root causes of social conflicts in Nigeria: Insights from Ezza Ezillo/Ezillo communal conflict in Ebonyi State. (2017) *World Applied Sciences Journal*. 35(4)63–647

⁴⁷ A.D. Badaiki (1997). *op.cit.*15

⁴⁸ R.N., Nwabueze. The Dynamics and Genius of Nigeria's Indigenous Legal Order. (2002) *Indigenous Law Journal*.

Vol.1:13–200.

⁴⁹ T.O., Elias, *Groundwork of Nigerian Law*. (London: Routledge & Kegan Paul Ltd. 1954) 12–13

⁵⁰ B.A. Garner, B.A.(Ed.) *Black's Law Dictionary. Ninth Edition*. (St. Paul: Thomson Reuters.2004). 443.

⁵¹ T.O., Elias. *The Nature of African Customary Law*. (Manchester University Press 1956).39

⁵² (1973)2 SMC 267 at 296

⁵³ *Owoniye v. Omotosho* (1961) 1 All NLR 304

⁵⁴ (1990)3 NWLR (Pt. 196) 182 at 207.

⁵⁵ *Gruwa v. Erinmilkun* (1961) 1 SCNLR 377

The adoption of customary law over some other systems of law has diverse advantages. Customary law aims to provide solutions that all parties can accept and understand, leading to trust and compliance with legal decisions. Flexible proceedings, more informal than other law systems, are usually adopted.⁵⁶ Aside being the most accessible kind of law for people at the grassroots level, customary court proceedings are generally conducted in their local dialects with limited costs in pursuing their cases and the legal principles involved often easy for members of the society to comprehend since they align with their cultural norms and traditions thereby enhancing the legitimacy and effectiveness of the legal system.⁵⁷

4.0 Customary Law, Customs and Democratic Governance

From the onset, it is pertinent to distinguish between the people's customs and customary law. Customs describes the way of life of people who live as one body of the same origin in a geographical setting. On the other hand, customary rules are sets derived from people's customs, mainly unwritten and readily amenable to change. Meanwhile, some authors have viewed that most of what we term 'customary laws' today have been influenced by Western rules through colonialism. In the modern State, the customary law is incorporated into the law of the contemporary State, most essentially in the colonised countries, thus we talk about the term constructed legal pluralism.⁵⁸

Nevertheless, the major obstacle to the study of the influence of customary law on establishing a resilient and virile democratic system is the fact that it is essentially unwritten. Despite this anomaly, the rules of customary law are now primarily reflected in the Court's pronouncements and some state legislations. Academic and legal practitioners consult these two sources when necessary and appropriate. Benda-Beckman stated in his writing that to solve this riddle,⁵⁹ German legal scholars, Post and Kohler, first boldly attempted to "set up a systematic worldwide collection of unwritten legal systems", which they employed in their comparative study.⁶⁰ Thus, according to Beham, it forms a better alternative to achieve the same through extensive field research. He also cited Bachofen, a German scholar and Sir Henry Maine, an English Scholar who published a comparative study of the legal system, firmly rooted in evolutionary perspectives⁶¹.

4.1 Rationales for the Study of the Relevance of Customary Law in Democratic Consolidation

Peter Orebech⁶² listed specific points which are hidden in his writing and should be considered as rationales for the study of the relevance of customary law in democratic consolidation, to wit:

- i. Customary rules are part of some areas of law that sprout from the popular will, which are easily enforced and binding on all⁶³. The agreement of minds represents oneness, which is suitable for a democratic culture⁶⁴.
- ii. It connotes people who grow up within a political system with a common culture and rights from birth⁶⁵.
- iii. It gives legitimacy to the government in a decent democratic governance⁶⁶.
- iv. It forms the basis of a well-solidified social contract system. A well-accepted customary law as the basis of a political organisation signalled the existence of a social pact. This resembles what Hobbes referred to as the 'social contract'⁶⁷.
- v. Harmony is built and entrenched into the system of governance with a customary law instrument through the pluralistic recognition of differing laws.
- vi. Most customary laws are not inimical to good democratic governance⁶⁸.
- vii. Most customary systems' rules are immature and unfit for the parliamentary-based system with balloting.

⁵⁶ Hanns Seidel Foundation. *Customary Law*. Law in Namibia Factsheet Series No.5 of 6 Accessed August 30, 2024 from https://eu.docworkspace.com/d/sIAO22_xo9-HGtgY

⁵⁷ Hanns Seidel Foundation. *op.cit.*

⁵⁸ K, van Benda- Beckmann (2001), International tycolopedic of the social behavioural Science, ante, FN, 60.

⁵⁹ *Ibid.*

⁶⁰ K. van Benda-Beckmann (2001) International Encyclopedia of the Social and Behavioural Science, Retrieved from <https://www.sciencedirect.com> on the 28th day of July, 2024.

⁶¹ Customary Law: An overview retrieved from science directory.com at <https://www.sciencedirect.com> on the 30th day of August, 2024.

⁶² Peter Orebech Book Review: Peter Orebech et.al., *The study of the Role of customary law in sustainable development: Law, Environment and Development Journal*; Cambridge: Cambridge University Press 2005, Reviewed by Roopa Madhav

⁶³ *Ibid*

⁶⁴ *Ibid*

⁶⁵ *Ibid*

⁶⁶ *Ibid*

⁶⁷ *Ibid*

⁶⁸ *Ibid*

4.2 The Various Customary Rules of Conflict Resolution Mechanisms in Africa

The various customary rules of conflict resolution mechanisms, which are considered complementary to democratic rule on the promotion of peace in Africa, are Mediation, Adjudication, Reconciliation, Arbitration, Negotiation, Private judging, Integrating, Obliging, Dominating, Avoiding, Compromising, and Exterminating.

4.3 The Impact of Customary or Traditional Rules of Conflict Resolution on Democratic Governance

4.3.1 Traditional Methods of Conflict Resolution in Ethiopia

Ethiopia maintained its freedom from colonial rule except for a short-lived Italian occupation from 1936 to 1941. A history of traditional administration and social relationships under a monarchical system of government mostly dominated Ethiopia's long history of existence." Ethiopia's first Constitution was written in 1931 under Emperor Haile Selassie, who reigned from 1930 to 1974. Before the enactment of this Constitution, customary law and some legal instruments were used to govern the socio-political life of the Ethiopian people. "The *Fitha Negest* and other written legal instruments were used in areas under the monarchical administration and therefore covered limited areas of the country among Christians, and people living in other areas had their cases adjudicated and disputes settled through customary institutions⁶⁹."

However, on assuming power, Aberra notes that Emperor Haile Selassie "stated in the preamble of their first decree that the custom of each locality should be respected and that cases were to be adjudicated according to the customary law of the locality". Aberra further stated that "at times customary laws, if found useful, could receive the status of law and be accepted as *atsesir*", "the law of the emperors", which he translates as a "presidential jurisprudence" used as a precedent for future cases. It is to be noted that the 1931 and the 1955 Constitutions did not include a provision related to customary laws⁷⁰.

From 1957 to 1965, Ethiopia legislated six modern legal codes in a substantial codification project to modernise its legal system. Some attempts were made to incorporate certain customary law principles into the modern codes.⁷¹ With the approval of the 1995 Federal Democratic Republic of Ethiopia (FDRE) Constitution by the Constitutional Assembly, the Constitution recognises the jurisdiction of customary and religious laws and courts in family and personal matters among the disputants that consent to such jurisdiction. Although these constitutional provisions incorporate customary dispute resolution in Ethiopia, "there are also serious risks for individual human rights, notably of women, children and minorities that need to be considered and protected through federal and State legislation and legal provisions⁷²."

4.3.2 Traditional Methods of Conflict Resolution in Kenya

In Kenya, Article 159(2)(c) of the Constitution stipulates that in exercising judicial authority, the Courts and Tribunals shall promote alternative forms of dispute resolution, including reconciliation, mediation, arbitration and traditional dispute mechanisms. These conflict resolution mechanisms in Kenya include resolution and settlement, negotiation, a shared place for people to sit down informally, and airing specific issues without conflict. Under these circumstances, parties identify the problems, discuss them, and arrive at a mutually acceptable solution without the help of a third party. In this situation, the negotiation is voluntary. As per mediation, this is a unique informal process. It takes on a three-way negotiation process where a third-party mediator mediates between the two conflictual parties. It is an effective, efficient, and fair process where power imbalance amongst the parties is addressed in the interest of justice. The outcome of the process is that it allows for acceptable resolutions for the parties. An example of this in Kenya is the earliest model of a people committee used in the North Rift and Western Regions by the National Council of Churches in Kenya. Other conflict resolution mechanisms in Kenya include problem-solving workshops and other traditional dispute resolution methods like establishing the Council of Elders, Consensus Approaches⁷³, etc.

4.3.3 Customary Rules of Conflict Resolution in Rwanda

A unique, content-specific, traditional mechanism of conflict resolution in Rwanda is Rwanda's Abunzi Mediation Committees. This committee responds swiftly to the justice needs of the communities recently emerging from conflict, especially between the Tutsi and the Hutus. This committee emphasised and injected a restorative process into the communities. They exist in units and cells in all sectors and at every level in every district. The elected members are made through a democratic process whereby members of the committees are elected members of their community. The Abunzi members were well known within the communities for

⁶⁹ *Ibid*

⁷⁰ *Ibid*

⁷¹ *Ibid*

⁷² *Ibid*

⁷³ Muigua K. (2017): Traditional Conflict Resolution Mechanism and Institutions. Retrieved from <https://www.kmco.co.ke>; (2018) Traditional Dispute Resolution under Article 159 of the Constitution of Kenya, (2010): Retrieved from <https://www.kmco.co.ke>.

their integrity, and they intervened and settled rifts in the event of conflicts before they escalated. The committee was established in 2004⁷⁴.

The Gacaca Courts were also established in 2001 for dispute settlement in Rwanda. The Gacaca courts officially closed on May 4 2012. The reconciliation process in Rwanda focuses on reconstructing Rwanda's identity, as well as producing balanced justice based on truth to engender peace and security. The Constitution now states that all Rwandans share equal rights⁷⁵.

4.3.4 Customary Rules of Conflict Resolution in Mozambique

Traditional authorities in Mozambique are decentralised institutions attached to a given territory rather than tribal chieftaincy-based. Under its indirect rule system, the Portuguese colonial government had replaced its nominees to occupy the chieftaincies' positions. This arrangement replaced the legitimate chieftaincy authorities, who were almost virtually excluded. The FRELIMO government of the post-independence era in Mozambique also adopted exclusion policies by nominating party secretaries accountable directly to the national government. So, the traditional authorities had little real influence in the local communities. In the 17-year civil war that ravaged Mozambique, the armed group RENAMO, the opposition, took advantage of the FRELIMO stance against the Native Authorities to win the war by collaborating with them. With these, the state superstructure was removed. Political administration was decentralised. On September 13 1994, Law 3 of 1994 established the Local Government Reforms Programme to allow flexibility and to bring traditional leadership. Thus, the routes to peaceful Reforms are by political arrangements and statute⁷⁶.

4.4 Lessons for Nigeria's Democratic Experience

Nigeria commenced its political journey from the Clifford Constitution 1922, which established a Limited Elective Principle. The elective principle led to newspapers' publications and the formation of political parties for the first time in Nigeria. Subsequent constitutions progressively promoted elective principles until independence, when more political parties were founded on regional strength. Later, before the First Republic Nigeria was wound up, we had the N.P.C. from Northern Nigeria, headed by Sir Ahmadu Bello- The Sardauna of Sokoto, the N.N.D.P., P from Eastern Nigeria, headed by The Owelle of Onitsha, Dr. Nnamdi Azikiwe, and the Action Group headed by Chief Obafemi Awolowo. The personality clash between Chief Obafemi Awolowo and the alleged electoral fraud, coupled with unhealthy political intrigues, led to the violent crisis eruption in the Western Region of Nigeria and the first Military takeover of government on January 15. 1966, which led to the assassinations of some Nigerian leaders.

After 13 years of Military rule, the Military Government under the leadership of General Olusegun Obasanjo handed over power to the civilian government headed by Alhaji Shehu Shagari of the National Party of Nigeria. Within the four years of civilian rule, the government declared an 'austerity measure' and an unbearable inflationary spiral was let loose. The expected change of government was made impossible by the 1983 massive electoral rigging. The result was the Military takeover of the government on December 31 1983. Generals Mohammad Buhari and Tunde Idiagbon headed the government. Later, in August 1985, General Ibrahim Babangida overthrew the Buhari/Idiagbon government. General Babangida started a transition to democracy program, which ended with the June 12 annulment, which was acclaimed to have been won by Chief M. K. O. Abiola. The crisis, which almost ended the Nigerian Federation, was followed by the establishment of the Interim Government headed by Chief Earnest Shonekan, a military re-takeover by General Sanni Abacha, the clinical taking away of General Sanni Abacha, the emergence of General Abdulsalam Abubakar as Head of State, and the death of Chief M K. O. Abiola.

After some years of the transition program, General Obasanjo reemerged as Nigeria's President under democratic rule. After President Obasanjo, Umaru Yar'adua emerged as President, after which Goodluck Ebele Jonathan ruled before the reemergence of General Buhari as President. Now, we have President Bola Ahmed Tinubu as the nation's President. From 1999 till date, the Nigerian democratic experience has been threatened by; incessant strike action by labour leaders upon removal of fuel subsidies and unbearable hardship let on the loose on Nigerians, the third term agenda crisis, the ENDSARS riot which was peacefully calmed-down by the efforts of the military under General Tukur Buratai here described as a democratic diplomatic soldier, and the End Bad Governance Riot.

5.0 Conclusion and Recommendations

There has been a crisis for Democracy in African countries. Democratic consolidation in the African continent is never an easy one. In the past years, especially in the '60s, '70s, '80s, '90s, and even 2000, there has not been any celebration for democracy in Africa. The African nations witnessed incessant military coups. The military coup seen in the African countries could be attributed to many factors; structural dilemma within the military

⁷⁴ Abunzi Mediation: Traditional Conflict Resolution for Community.: Retrieved from <https://www.sgd16.plus>.

⁷⁵ Ibid

⁷⁶ "Traditional Authorities in Mozambique: Between Legitimization and Legitimacy": <https://www.ces.uc.pt>.

itself, the emergence of authoritarian rule, ethnicity, and nepotism, endemic and highly entrenched corruption of the political rulers and civil servants counterparts, total neglect of the youths within the scheme of things, constitutional defects, and inadequacies, separate customs and traditions coupled with inbuilt, and entrenched grievances, lack of trust among the component units of a federating states, executive recklessness, legislative authoritarianism, poverty and the manipulation of the electoral processes etc.

It is, therefore, against the above background that we proposed some recommendations based on the need to complement our modern Constitution with certain reasonable features ingrained and forming part of African Customary Rules of administering their precolonial states. This is necessary to witness a more robust reawakening of a resilient form of democracy that is well-structured, sustained, fortified, and well-consolidated. This is because it is one thing for democracy to emerge and another for it to be appropriately managed, sustained, flourished, endured, and consolidated. The above is achievable if there is democratic change, and the institutions to maintain it are well-guided and provide real guidance of the democratic process. Some recommendations are here elicited to transform our democracy into a more resilient and long-lasting regime; free and fair election coupled with the transparent electoral process, oath taking outside the words of God, compelling legislative consultations before the introduction of bills, dealing decisively with the endemic poverty ravaging the Country, community assistance through provisions of reasonable funding, enactment of Constitution rooted in the spirit of the people, the establishment of customary courts, establishment of conflict settlement committee at atomistic units, recourse to traditional conflict settlement and system of adjudication to enhance quick dispensation of justice, the establishment of committee for checking abuses of power from the base, and using the instrumentality of the principle of estoppel to compel governmental officials responsibility.

5.1 Free and Fair Election, with Transparent Electoral Process

For an election to be free and fair, it is another thing for the electoral process to be transparent. There cannot be a transparent electoral process where money is used to subdue the conscience of voters. When money is given to the electorates before they exercise their franchise, voters are likely to vote against their parties. Thus, unless the authorities in charge deal with poverty decisively, the electoral process will continue to be manipulated, and our democracy will be endangered.

5.2 Oath Taking Outside the Words of God

The view has been expressed in certain quarters that taking the oath of office by swearing with either the Holy Bible or the Holy Quran can never stop corruption and misrule. The point is that God is ever merciful unto sinners and that when man repents, God relents. And the belief is that for this reason, many corrupt politicians go free with their proceeds of corruption. Hence, the popular view is that our politicians should start taking oaths with symbols of the local gods, such as guns, cutlasses, axes, etc. This is because the belief is that there is the fear that local gods reside with instant judgement with calamitous consequences capable of stopping corruption and misrule.

5.3 Compelling Legislative Consultation before the Introduction of Bills

It can never be a celebration for any democracy where members of the parliament are free to pass parochial bills to the detriment of the general population in the Country. In Nigeria, we find the situation of budget padding every year. Our parliament passes bills on their salaries, constituency projects, and other emoluments, and votes on matters of their self-interest. In Nigeria, we discovered a country where legislatures are usurping purely executive functions by implementing executive projects and formulating and implementing policies. Here is a nation where the yearly budgets for the parliaments are in multiple ratios compared with the salaries of university lecturers. It has been suggested that before any bill is introduced into the parliament, permission must be obtained from the Council of State and the Council of Jurists established for that purpose.

5.4 The Endemic Poverty Ravaging the Country must be Dealt with Decisively

For our democracy to be resilient, stable, thrive, and long-lasting, the endemic poverty that has taken root deeply in Nigeria must be completely uprooted and eradicated. First, full-scale mechanised farming must be introduced on a large scale, with workshops and refresher courses to be introduced at the grassroots level. Coupled with this is that irrigation system must be comprehensively introduced with free improved seedlings of high-yielding varieties freely distributed on large scale to significant numbers of farmers. In addition, the current interest rate regime on loans and overdrafts which has been in existence for long, and which has led to the obliteration of the middlemen in Nigeria should be abolished entirely with a more pragmatic approach to the interest rate regime based on our present economic reality in replacement. Our customary rule relating to lending does not permit charging cut-throat interest rates under the guidance of the Central Bank of Nigeria's monetary guideline regulations for more than a decade. Concrete steps must be taken on the external value of the Naira vis-a-vis other foreign currencies.

5.5 Community-Based Assistance through Provision of Reasonable Funding

The government should introduce a community-based assistance scheme through the provision of reasonable funding for collective projects, and assistance on individual projects, within our traditional farming system,

there exists a joint farming work called 'AARO' that is collective fundings wedding, where all the farmers would form farming groups of up to fifty members, and engages in collective farming of each of the members of the association on rotational basis. This system encourages large-scale agriculture on the part of each farmer. The government should promote this customary guild or cooperative farming rule with substantial financial support.

5.6 Provision of Constitution Rooted in the Spirit of the People

The Constitution of any nation is always rooted in the spirit of the people. Since independence, especially after the first military coup of 1966, most of our constitutions have been military constitutions. The present 1999 Constitution, once referred to by Professor Adeyeye on the floor of the Senate as General Sanni Abacha's nebulous document. This Constitution tells lies in its Preamble in the statement, 'We the people of Nigeria'. Aside from other undesirable provisions, the Constitution that gives the legislatures the power to legislate on their salaries and other emoluments is not rooted in the interests of Nigeria's citizens.

5.7 Establishment of Conflict Resolution Committees at every Atomistic Unit

The fact that we cannot reasonably predict a trouble zone implies that everywhere humans gather in substantial numbers must be provided with a peace committee to nip unexpected occasional crises in the bud. A small crisis could escalate everywhere and culminate in an uncontrollable crisis. Had this conflict resolution platform existed, the crisis that engulfed the Shasha market in Ibadan, the capital of Oyo State, would have been avoided.

5.8 Recourse to Traditional Settlement Mechanisms

Aside from the establishment of Customary courts that deal with marriage, divorce, succession issues and more, a comprehensive roadmap should be established for the introduction of the various forms of customary rules of conflict settlement mechanisms to enhance our democratic rule, and to complement the state apparatus of conflict resolution.

5.9 Establishment of an Incorruptible Institution for Checking Abuse of Power from the base

An Institution for checking abuses of power must be established everywhere in Nigeria to report abuses of power wherever they exist. The corruption pervading everywhere is so alarming. Even the institutions established to offer protection and forestall abuse of powers are corrupt.

5.10 Using the Instrumentality of the Principle of Estoppel to Compel Campaign Promises by Politicians

Taking from the Indian Courts, politicians should be compelled by the courts to implement their campaign promises, which form the basis of the social contracts they entered with the people during their electioneering campaign, and which promises they used to secure the electorate's votes by exploring the instrumentality of the principle of estoppel.

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